(28,756)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 801.

GEORGIA RAILWAY AND POWER COMPANY AND ATLANTA GAS LIGHT COMPANY, APPELLANTS,

vs.

RAILROAD COMMISSION OF THE STATE OF GEORGIA, C. M. CANDLER, CHAIRMAN, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

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1 In the District Court of the United States for the Northern District of Georgia, Northern Division.

GEORGIA RAILWAY & POWER COMPANY and ATLANTA GAS LIGHT COMPANY, Complainants,

vs.

RAILROAD COMMISSION OF GEORGIA, of the State of Georgia; C. M. Candler, Chairman; Paul B. Trammell, James A. Perry, John T. Boifeuillet, J. D. Price, Commissioners, Defendants.

Bill of Complaint.

To the Honorable the Judges of said Court, Sitting in Equity:

Complainants bring this, their bill, against the defendants, and each of them, and thereupon complainant- respectfully shows unto this Honorable Court as follows:

1. That complainant, Georgia Railway & Power Company is a corporation organized and existing under the laws of the State of Georgia; that it was duly incorporated under a charter issued by the Secretary of State, of the State of Georgia, and that its capitalization has been duly approved by the defendants in accordance with the laws of Georgia; that it is authorized and empowered by its charter, and is now actually engaged in conducting the electric light and power business throughout a large part of the territory in Georgia, the street railway business in Atlanta, Georgia, and vicinity, and the gas business in Atlanta, Georgia, College Park, East Point, and vicinity, and is generating and furnishing light, heat, power, street car transportation and artificial gas for illumination, and all other purposes to which it is adopted; that its principal office and
2 place of business is in Atlanta, Fulton County, Georgia, in said Division, said Northern District, and it is a citizen and resident thereof.

2. That complainant, Atlanta Gas Light Company, is a corporation under the laws of the State of Georgia created by an Act of the General Assembly of the State of Georgia on the — day of ——, 1856. That it has power under its charter, and up to the time of the leasing of its property hereinafter shown, it was actually engaged in the manufacture and furnishing of artificial gas to the public in Atlanta and vicinity, same to be used for lighting, cooking, and all other purposes to which it is adapted. That its chief office and place of business is, and always has been, in the City of Atlanta, Fulton County, Georgia, in said Division and said District, and that it is a citizen and resident thereof.

3. That the defendant, the Railroad Commission of the State of Georgia, is a body politic created by, and existing under the laws of

the State of Georgia, having its principal and official office and residence in Atlanta, Fulton County, in said Northern Division of the Northern District of Georgia.

That by the laws of Georgia the domicile of said Commission for suits instituted against it is fixed at the capitol of said State in Atlanta, Fulton County, Georgia.

4. Under the acts creating and enlarging the powers of said defendant, the Railroad Commission of Georgia, it is provided that said Commission shall have jurisdiction in fixing rates and charges that may be collected and received by Gas Companies and others furnishing gas, including complainants, serving the public as utility Companies, as well also as the charges and rates to be collected by complainant, Georgia Railway and Power Company, for
3 furnishing street car transportation, electric light and power.

That this is a suit in equity of a civil nature arising under the laws and Constitution of the United States, as hereinafter more fully set out, and that the matter in controversy herein, exclusive of interest and cost, exceeds the sum of three thousand ($3,000.00) dollars.

5. That by appropriate lease complainant, Atlanta Gas Light Company, transferred to the Georgia Railway and Electric Company, a corporation under the laws of the State of Georgia, and said last named Company by appropriate lease conveyed to complainant, Georgia Railway and Power Company, all and singular the gas plants, gas works, gas systems, lands, franchises, contracts, and other property of every description, real, personal and mixed, now, or hereafter to be acquired by the said Atlanta Gas Light Company, wherever the same now, or may hereafter by located, constructed or extended, and all the franchises, rights, privileges, easements, permits, licenses and appurtenances thereunto belonging, or otherwise, including the right to demand and receive to the Atlanta Gas Light Company's own use, of all tolls, rents, revenues, incomes and profits, but except its right to exist as a corporation, and its corporate seal, books of records and accounts, and its deeds, grants, plats, and other instruments and documents constituting its evidence to the right and title to property of the said Atlanta Gas Light Company, and complainant, Georgia Railway & Power Company, is now in full possession thereof under said leases operating and conducting the said Gas Business by virtue of its own charter powers and by virtue of the franchises and rights so acquired under said lease, and has been so in possession and so operating same during the times complained of herein.

6. That complainant, Georgia Railway & Power Company, under said lease rights, and under its charter, is now conducting the business of furnishing gas to the public in Atlanta, Decatur, Col-
4 lege Park, East Point, all of which are incorporated Cities or Towns, and in the vicinity of said four municipalities; that its rates and charges for such gas and service furnished to the public are fixed and prescribed by the defendant, the Railroad Commission of Georgia, as hereinafter more fully shown; that it is not allowed

to collect any charge, rate, or receive any compensation other than such as is prescribed by said defendant, and has not been so allowed to receive any during the times herein complained of.

7. That prior to April 1918 defendant had never made any valuation of the properties used by complainant in the manufacture and furnishing of gas to the public in said municipalities and vicinity; that on April 16th, 1918, application was made to said Commission for an increase in the rates then being charged on the ground that an emergency existed on account of the War. No appraisement or valuation, nor detailed inventory could be made to meet said emergency and after consideration on August 14th, 1918, said Commission granted an emergency rate effective on November 1st, 1918.

That said emergency rate proved utterly inadequate to meet the conditions and on April 21st, 1920, another application was made for an emergency rate growing out of the then existing conditions. This also was passed on as an emergency rate without the Commission determining or fixing the then present fair value of the property, and on September 20th, 1920, said Commission granted partial relief on said application, effective October 1st, 1920.

Said last named rate proving also utterly inadequate to meet the emergency and to provide just and reasonable rates to complainant, another application was made for an emergency rate on November 28th, 1920, and after a hearing, under an effort to meet the emergencies still in existence, the defendants on February 10th, 1920, granted a further increase of rates effective about March 1st, 1921.

No finding of the Commission as to the then present fair value of the property of the complainant used in its gas business was made at that time, but the same was granted also as an emergency rate.

This rate, effective March 1st, 1921, permitted complainant to charge a net rate of one dollar and ninety cents ($1.90) per thousand cubic feet up to ten thousand; one dollar and eighty five ($1.85) cents from ten thousand to thirty thousand; and one dollar and eighty cents ($1.80) over thirty thousand, in Atlanta and vicinity; and to charge two dollars ($2.00) net per thousand for all gas furnished in Decatur, College Park, East Point and vicinity.

8. That said relief granted by defendants on February 10th, 1921, was in a large measure withdrawn by order of the defendants, without any notice to, or hearing by complainants, or either of them, said order so withdrawn reducing the same being dated May 28th, 1921, and was to become effective June 1st, 1921. By this order twenty-five cents (25¢) per thousand cubic feet was taken off of all of the rates fixed in the order effective March 1st, 1921. This reduction so ordered by defendants without a hearing reduced the complainant's revenues and incomes from gas about three hundred and fifty thousand ($350,000.00) dollars per annum.

9. That on September 20th, 1921, without any complaint having been filed by any customer, or any member of the public, the defendants issued a rule calling upon the complainant, Georgia Railway & Power Company, to show cause why the defendants should

not revise *its* gas rates then in force in Atlanta and vicinity after the said rates had actually been in practical effect only about two months. Said rule called upon sail complainant to show cause September 30th, 1921, in said matter, and a delay in said hearing was had until October 31st, 1921, when the hearing was had on
6 said rule so initiated by the defendants.

10. That said hearing was had and respondent did show cause in writing before the defendant, said Railroad Commission of Georgia, and did introduce evidence and submit argument in said matter, the hearing having been concluded on November 2nd, 1921.

11. That at said hearing complainants submitted a written response to said rule, a careful inventory and appraisement of its physical properties, including land, transmission and distribution system, buildings and miscellaneous structures, plant equipment and general equipment, actually used by it in the manufacture and supplying of gas to the public in said territory. Said appraisal was made as of September 30th, 1921, showing the cost of re-producing said physical properties, condition of such physical properties, and the cost of re-production less depreciation. The same embraced only the physical properties actually owned and in use on September 30th, 1921, and embraced the property owned by the Atlata Gas Light Company and leased to the Georgia Railway and Power Company, and the perfecting the organization. That complainant's gas business had and used in supplying gas in the Town of Decatur and vicinity.

12. Said inventory and appraisement showed said fixed properties owned and in use on September 30th, 1921, in its then condition, was worth at least six million, one hundred thousand and seven hundred and fifty ($6,100,750.00) Dollars.

The evidence of the engineers, without contradiction or any evidence in opposition thereto, showed that said valuation was the fair, present value of said properties on September 30th, 1921, independent of all method as to how the same was arrived at, and independent of any one particular method, or of the re-production value thereof, less depreciation.

7 13. That in addition to said fixed physical properties complainant had other physical properties, sometimes known as working capital, that the sum actually employed in the service of the Company necessary to perform its duty to the public amounted to four hundred and twenty five thousand ($425,000.00) dollars which should be added to the valuation of said fixed physical properties.

14. That in addition to said items of physical property, consisting of fixed phusical property and working capital, the respondent owned, and had in the service for the public necessary to furnish gas other property, sometimes called going value, or going concern value, of the reasonable fair value and worth of one million ($1,000,000.00) dollars, the same arising from attaching the business and perfecting the organization. That complainant's gas business had been built up over a period of sixty five (65) years and had some

thirty two thousand (32,000) customers attached using its service and that the same was of the fiar value of one million ($1,000,000.00) dollars.

15. That in addition to the above enumerated items complainant showed in said response that the franchise value of said Gas Business under which said business was conducted was property in the service of the public. The same was a special Act of the Legislature, older than the Constitution of the State, and was assessed by the State for taxation at three hundred thousand ($300,000.00) dollars, and that this was property upon which it should be allowed to make an earning, and the same should be added to the other items of property enumerated.

This franchise is of the fair present value, and was worth on September 30th, 1921, one million ($1,000,000.00) dollars, and was property in the service of the public in connection with said Gas Business.

8 That in addition to the items of property above enumerated, complainant during the years 1917, 1918, 1919 and 1920, under the rates fixed by the Commission, (the defendant) had sustained a loss of more than one million ($1,000,000.00) dollars; that this loss is based on the minimum valuation which the defendant Commission had named in the said emergency rate hearings as the sum upon which it was certainly allowed to earn eight per cent (8%) return. Said Commission ruled as to the complainant that it was entitled to such an earning of eight per cent (8%) as a fair return, and that the minimum value was one of which the public could not complain, but that the complainant might.

18. Complainant insisted that this loss of one million ($1,000,000.00) dollars sustained as the direct result of the defendant, said Commission, preventing and prohibiting complainant from collecting said fair, reasonable return, on its property should be amortized or added in the capitalization, or otherwise provided for in the rates, which should be allowed complainant under the hearing held in October and November 1921, and that this sum should be added to the valuation of the complainant's property capitalization, or the sum should be amortized over a period of something like five years, and provided for in the rates, that complainant should be allowed to receive and earn in order to recoup said loss inflicted upon complainant by carrying out the rules of the Commission.

19. That the said response of defendant and the said value set out therein are the true, real, fair, present valuation of the said several items of property used by complainant at the time, and now, in the service of the public, and all of the same useful for such service in furnishing gas and discharging its duty to the public. That the evidence submitted to said Commission was uncontradicted and showed conclusively that the same was the then present value

9 of said property, and there was no conflict whatever, or any evidence introduced in opposition thereto, and the said value should have been adopted and made the base of rates allowed to

complainant for gas service, and as the proper charge for gas delivered to the public.

19-A. Complainant showed that at said hearing before the defendants on October 31st, to November 2nd, 1921, the fullest and most complete data, inventory, appraisement, valuation, maps, charts and information were submitted. That engineers employed by the complainant, Georgia Railway & Power Company; engineers employed by bankers, who were having the property appraised for value for the purpose of fixing the amount they were to loan to the Company upon the same as security, and an efficient engineer employed by the defendants themselves, who had made a full and complete report on the properties, were all in evidence, and for the first time the said Commission had all of the necessary data, information and evidence before it upon which to fix a fair, present value of the property of the Gas Company.

19-B. That complainant, Georgia Railway & Power Company, in response to said rule to show cause why a revision of its rates should not be made petitioned defendants to then raise the existing rates in order to enable petitioner to earn a fair return upon the then present value of its property, and in order to allow it to earn eight per cent (8%) upon such fair valuation, which has been determined by the defendants as a fair rate for it to earn on the fair present value of its property in the service.

10 20. That on December 30, 1921, in the evening of said date, the defendants, the Railroad Commission of Georgia, passed an order, a copy of which is attached hereto as a part hereof and marked "Exhibit No. 1."

By said order, the rate that complainant, Georgia Railway & Power Company, is allowed to charge for gas is reduced ten cents per thousand cubic feet from the rate which was then in force. This reduction makes a further loss of revenue to complainants of about $140,000.00 per year.

Said order was to become effective on January 1, 1922, which date falls on Sunday and the following day, Monday, is a legal holiday. Plaintiffs, by extra diligence, secured a copy of said order late in the afternoon of December 30, 1921.

Said order entirely refuses and denies any increase to complainant in the rate for gas and the only change made from the former rate is a reduction.

Complainant prays leave to refer to said Exhibit No. 1, when and as often as may be desired.

21. At the same time the said defendants, the Railroad Commission of Georgia, through a majority of said Commissioners, the said Commissioner Boifeuillet dissenting, filed a written opinion upon which said order is based, a true copy of which is hereto attached and made a part hereof, marked "Exhibit No. 2"; to which the usual leave of reference is prayed when and as often as may be desired.

22. Complainant shows that the method of arriving at the value of the property of complainant upon which it is entitled to earn a return because same is in the service of the public, is stated in said opinion as follows:

11 "In our judgment, the 'fair value' of this gas plant at this time for rate making purposes may be reasonably approximated by considering, in the absence of any evidence as to original or historical cost, replacement cost under normal conditions as of January 1, 1914, immediately preceding price disturbance by war, plus the actual construction cost of additions, extensions and betterments since that date. In so doing there is sufficient recognition of conditions existing during this period and now.

"The fair value of the property thus estimated."

23. Complainant shows that this method of valuation of its physical properties was strictly adhered to by the defendants in valuing same and in determining the amount complainant would be entitled to earn upon as the fair present value of said property.

Complainant says that said method entirely ignores any increase in the value of its property since January 1, 1914, and deprives complainant of the right to earn anything on the increased value of its property which has taken place since January 1, 1914, eight years ago. That said property, valued on January 1, 1914, at $3,897,922.00, has enhanced since said date, and is now worth at least seventy per cent more, or a total increase of $2,727,000.00.

Even taking this extremely low valuation made by the engineer of bankers who were lending money on the property, and which was not its then fair value, the finding of the Commission and its judgment, Exhibit No. 1, deprives complainant of any use or income from at least $2,727,000.00 of property which it now actually has in the service of the public and which is now actually worth at least that price as its fair value at the present time.

24. That the valuation put upon said properties by said engineer of said bankers on January 1, 1914, and which is adopted by
12 the defendants, the Commissioners, as the basis upon which they constructed the valuation arrived at as of December 30, 1921, is based upon the dollar then circulating in this country and upon the purchasing power of the dollar then in circulation, and that the dollars now received by complainant in payment for its gas delivered and for its gas service, being the present circulating dollar now used in this country, has a purchasing power of something like seventy per cent less than the dollar in which said property was valued on January 1, 1914.

Complainant shows that it is utterly unfair and unjust and unconstitutional to undertake to arrive at the present value of complainant's property by any such method and that the order passed by the Commission, Exhibit No. 1, is illegal and confiscatory.

25. That the going concern value arrived at by the defendants in fixing the value of complainant's property on December 30, 1921, is

unsound; that the ten per cent allowed therein for such going concern value is based upon an erroneous finding as to the value of its physical properties, which should be enhanced by not less than $2,727,000.00 as aforesaid; that ten per cent of this amount would increase the said going value $272,700.00.

Complainants show that the real, true present going concern value which should be added in determining the amount upon which it should be allowed to earn, and which was shown by the undisputed evidence before the Railroad Commission, is at least $750,000.00.

26. That the amount allowed by defendants in arriving at the value of its property, $266,677.00, as working capital, is inadequate and incorrect; that the true amount is not less than $420,-
13 000.00; that this is a physical property and the evidence before the Commission was undisputed that the actual amount employed by the Company for this purpose during the year preceding September 30, 1921, actually amounted to this sum of $420,000.00. That sum was necessary to properly carry on the business and serve the public, and was actually employed for that purpose during the preceding year.

27. That the aggregate value found by said defendants as the fair value as of December 30, 1921, of the gas properties of the Georgia Railway & Power Company being used in the public service, including working capital of $5,250,000.00, and the fixing of this sum for use as a basis for the rate allowed as aforesaid, by said order, is inadequate, unjust and wholly insufficient.

That said property, valued at said sum, is and was on December 30, 1921, of the fair present value of at least $7,500,000.00, exclusive of franchise value and of the $1,000,000.00 loss sustained by complainant, Georgia Railway & Power Company claimed for ammortization or capitalization.

28. That in arriving at the present value of said property of complainant as a basis for allowing the rates for gas, the opinion of said Commission, Exhibit No. 2, expressly shows that they excluded from said valuation the franchise value of complainant as hereinbefore set out, and also excluded the item of $1,000,000.00 which complainant has lost by reason of the rates which the Commission required it to charge as hereinbefore shown, and which complainant claims should be capitalized and added to the values of its property or ammortized and provided for in the rates allowed over a reasonable number of years.

That under said ruling and said valuation, these items of
14 $1,000,000.00 for franchise and $1,000,000.00 loss by complainant under the orders of the Commission, are dedicated to the public service and taken from complainant, Georgia Railway & Power Company without any compensation and without being allowed to enter into the estimate of what it is entitled to earn.

29. That complainant, Georgia Railway & Power Company, is furnishing to the public efficient gas service and is furnishing high-grade gas, as provided by the Commission, and is in all respects dis-

charging its duty as a public utility in an efficient and economical manner, and is justly entitled to have at least eight per cent return on the said fair value of its property, which it charges must include said franchise and said amount of $1,000,000.00 which it has lost, which said value is at least $9,500,000.00.

30. That the service and gas being furnished by complainant, Georgia Railway & Power Company, to the public, and for which its charges are made, and to which the use of its property is dedicated, is worth at least $2.00 per thousand cubic feet, net, and that this rate would yield to complainant about 8% on the fair present value of its property used in its gas business.

31. That the rate allowed by said order, Exhibit No. 1, will not produce eight per cent return upon the valuation of complainant's property as fixed by the Commission at $5,250.00, but would amount to five and one-tenth (5.1%) per cent on said valuation fixed by said Commission, which is in itself unreasonably low and confiscatory.

That the said rates fixed and allowed by the Commission to be charged by the complainant for gas and service, Exhibit No. 1, will not allow complainant, Georgia Railway & Power Com-
15 pany, to earn more than three and six-tenths (3.6) per cent on a valuation of $7,500,000.00.

That said order, Exhibit No. 1, will, if carried out, not allow complainant to earn more than two and eight-tenths (2.8) per cent on a valuation of $9,500,000.00.

32. That the said order, Exhibit No. 1, is made effective, by its terms, within thirty-one or thirty-two hours after same was filed in the office of the Commission; that it is physically impossible to change any of the prepay meters within the time allowed before said order becomes effective. This change requires the adjustment of calculating and recording machinery, and each individual meter has to be changed; and there are 13,000 of these prepay appliances necessary to be changed in order to comply with this order. It will take at least six weeks to two months to make such change.

That the reading of meters is a continuous process and it will take considerable time to ascertain and determine what particular quantity of gas was delivered in the month of December and what particular quantity in January, as to any given customer.

That it is impossible to comply with the order of the Commission within the time allowed and to put same into effect on January 1, 1922, as to any substantial part of its customers.

33. That under the laws of Georgia, any public utility company which fails or neglects to obey or comply with any order or requirement of the Railroad Commission shall forfeit to the State of Georgia a sum not exceeding $5,000.00 for each and every offense; and every violation shall be a separate and distinct offense;
16 and in case of continued violation, every day thereof that violation takes place shall be deemed a separate and distinct offense.

Under the rules of the Railroad Commission of Georgia, the de-

fendants, it is provided that no rate shall be discontinued or raised without the permission of said Commission being first obtained, and complainant is absolutely helpless to protect itself or its property against the said severe penalties, unless said order is enjoined and restrained.

34. By the law of Georgia it is further provided that every officer and employee of complainant, Georgia Railway & Power Company, who shall violate or fail to observe any of defendants' orders shall be liable to indictment and prosecution and the imposition of fines and penalties; and the said complainants are also made liable for damages for any failure to observe and obey such orders, and same may be instituted against them by any person claiming to have sustained loss or injury thereby.

35. That complainant is entitled under the laws of Georgia, and under the Constitution and laws of the United States, to have its property valued for the purpose of determining just and reasonable rates and charges at the present fair value ther-of; it is entitled to charge and receive such rates and charges as are sufficient to yield a reasonable compensation for the services rendered by it and to provide a reasonable return upon the fair value of its property actually used in the public service; that the Railroad Commission of Georgia has determined and ruled, in cases involving plaintiff's gas business, that eight per cent on the present fair value of its property is a reasonable return for it to earn and receive.

17 That under the Fourteenth Amendment to the Constitution of the United States, it is entitled to charge and collect such rates and fares as will provide the necessary income and revenue to produce such eight per cent, which is a fair and reasonable return.

That the value of the property aforesaid, at the present time, and at the time of said order as fixed by said defendants at $5,250,000.00, is unjust, unreasonably low and deprives complainant of its property without due process of law and confiscates its property in consequence thereof and dedicated same to the public use without a fair and reasonable return there-for; is in violation of the Fourteenth Amendment to the Constitution of the United States, and is illegal and void.

That said action of said Commission is confiscatory and deprives the complainant of its gas properties, hereinabove described, without due process of law and denies to it the equal protection of the law; and that the order of the defendant, Railroad Commission of Georgia, *does*, as herein set forth, denies to complainant the protection of said constitutional amendment and does deprive it of its property without due process of law and denies to it the equal protection of the law.

18 36. That in the opinion of said Commission, Exhibit No. 2, in dealing with the depreciation allowed, the finding of said Commission that 2% is a reasonable allowance on the physical properties, annually, the complainant is not allowed to charge off a

reasonable amount, as shown by the undisputed evidence before the Commission and as a fact in dealing with such properties that not less than 2½% is a fair and reasonable amount and that at all times prior to 1921 the defendants have allowed this Gas Company a depreciation of 2½%.

That the actual depreciation in physical properties of complainant in its gas business amounts to 2½% per annum, and perhaps more, and it is confiscatory of complainant's property not to allow it to charge 2½% as depreciation.

In addition, the depreciation figured by the defendants in their opinion in arriving at a rate and making a base upon which to fix rates is figured upon the erroneous physical value as hereinbefore shown, and it should not only be 2½% depreciation, but should be figured upon the true value of the depreciable property as shown herein. This action of the Commission in reducing this percentage of depreciation, even estimated on the erroneous valuation of the depreciable property, deprives defendant of $25,000 per annum of incomes which it is entitled to earn and receive in order to keep its property up and earn a fair return thereon.

37. That in said opinion, Exhibit No. 2, in undertaking to arrive at the earnings of complainant for the months of July to November, both inclusive, in 1921, the Commission has fallen into the error of including in said returns receipts from gas that was sold at a higher price, to wit, $1.90. That the only way to ascertain the true
19 income for the period named is to take the actual quantity of gas sold and apply the $1.65 scale thereto, instead of undertaking to treat the gross amount received by the company, which reflected these meter readings at the higher rates, and which were not current with the months taken in the estimate.

Appplying the $1.65 scale to the actual gas sold and metered, as shown in the opinion, will diminish the amount received by the company during that period by the sum of $30,000, and which shows that the defendants, the Commission, erroneously estimated the incomes of the company in arriving at the rate they would allow it to charge in future.

So that, instead of complainant having a net earning, during said period of $203,811.91, it would have only a net earning of $163,582.63.

20 38. Complainants show that unless the defendants are restrained and enjoined immediately from putting said order into effect on January 1, 1922, that they will suffer irreparable damage and injury; that they will become liable to said penalties under the laws of Georgia, and their officers and agents will become subject to indictment under the criminal laws of Georgia, and that they will continue each day to have said penalties and said liabilities accumulate against them, and that there is no other protection that they can have except a restraining order by the court to prohibit said order from going into effect that will give them any protection at all.

39. That if a restraining order is issued and said order of the defendants, Railroad Commission of Georgia, is stopped from going into effect, that no injury or damage will accrue to anyone else, as complainants are perfectly solvent, and the order of the court upon final hearing of the application for injunction can fully protect all customers of the company and the public generally. That the regular meter users will not have to pay their bills until February 10th, for gas consumed during January, and that the prepay customers can readily have the amount ascertained and rebated to them, if it should be determined that the complainants are not entitled to have said order enjoined, and that said order shall go into effect. That this can and will be done without any cost or expense to any of the customers upon an order of the court, and that by issuing the restraining order alone can the complainants be protected, and the public and all others interested can be fully protected, even if complainants do not finally prevail in their contention.

40. That if the order of the Commission goes into effect, that as to all such customers as complainants may be able to comply with said order in changing the 1,30- prepay meters, the sums
21 thus paid will be small and scattered, but large in the aggregate, and will be entirely lost to complainants, even though they succeed in their contention in this case.

41. That on account of the facts herein recited, and especially by reason of the heavy penalties prescribed by the law of Georgia, and by the Railroad Commission, the defendents, which are continuing in their nature, complainants show that they have no adequate remedy at law and can only obtain relief in a court of equity.

42. Complainants being without remedy, except in a court of equity, waive discovery from defendants and each of them, and prays that *sia* order made by said Commission and said Exhibit No. 1 hereto be vacated and set aside, and that the finding of said commission as to the value of complainants' property at $5,250,000 be vacated and set aside, and that the true value thereof be fixed and established by the decree of court, and that the same be fixed at $9,500,000, and that the defendants be restrained and enjoined from fixing any other rate for gas service than such as will produce and secure to complainants 8% return on the valuation fixed by the court as the present fair value of complainants' property, which they claim is not less than $9,500,000, and that temporary restraining order do issue immediately, restraining the said defendants, their agents and employees from putting the said order into effect of January 1, 1922, or otherwise undertaking to enforce the same until the further order and judgment of this court, and from undertaking to inflict or invoke any of the penalties or criminal prosecutions thereof.

43. Further, that on a hearing, that the defendants and each of them, their agents, attorneys, employees and representatives, and all persons acting by their authority, or in concert with them, be
22 personally restrained and enjoined:

(*a*) From enforcing said order of December 30, 1921, or any of the provisions thereof.

(*b*) From enforcing the provisions of the law of Georgia, or any order of the defendant, Railroad Commission of Georgia, so as to render the rates and charges specified in said order Exhibit No. 1 as the maximum rates and charges that can be legally made — complainants for the service for which said rates and charges are prescribed, respectively.

(*c*) From preventing the complainant from advancing its rates and charges for said services as stated in this bill of complaint, or from preventing a just and reasonable rate and charge for furnishing gas and for service covered by said order Exhibit No. 1.

(*d*) From preventing complainant from advancing its charge for gas and gas service to the basis of rate as stated in this bill of complainant, as herein set out, and from preventing complainant from charging just and reasonable rates for gas and gas service.

(*e*) From establishing the said $5,250,000 as the present fair value of the complainant's property on which they are entitled to earn for services performed or from making any other valuation as may be found by the court to be the true present value of complainant's property.

(*f*) From prosecuting any suit, civil or criminal or permitting any such suits or proceedings to be instituted or prosecuted against complainants, or either of them, for the collection or assessments of any penalties by law or the order of the Commission for charging just and reasonable rates, or for charging different rates from those prescribed in said order Exhibit No. 1.

(*g*) Complainants further pray for all further and equitable relief to which the facts of their case may entitle them.

(*h*) Complainants pray that writ of subpœna issue herein,
23 directed to the above named defendants and each of them, commanding them on a day certain ther-in to be named to appear and answer this bill of complaint.

COLQUITT & CONYERS,
ROSSER, SLATON, PHILLIPS & HOPKINS,
LINTON, C. & J. L. HOPKINS,
J. PRINCE WEBSTER,
SPAULDING, McDOUGALD & SIBLEY,
Attorneys for Complainants.

UNITED STATES OF AMERICA,
Northern District of Georgia:

GEORGIA,
Fulton County:

Personally appeared G. W. Brine before the subscribing officer, who on oath says that he is Vice President of complainant, Georgia

Railway & Power Company, and is President of the Complainant Atlanta Gas Light Company, and has been such as to both said companies during the entire period complained of in the foregoing bill of complaint; that he is actively and exclusively engaged in the service of said complainant, and is familiar with their operations and conduct of business, and especially familiar with the Accounting Department, having charge of the same, and has had during the period complained of in the foregoing bill of complaint; that he has read the said bill of complaint, and that the facts stated therein are true, except where stated on information and belief, and these he believes to be true.

G. W. BRINE.

Sworn to and subscribed before me, this December 31, 1921:

____ ____,

Notary Public, Fulton County, Georgia.

24

Office of the

Railroad Commission of Georgia,

Atlanta.

December 30th, 1921.

File No. 13946.

In re Gas Rates of THE GEORGIA RAILWAY AND POWER COMPANY in Atlanta and Vicinity.

Upon consideration of the record in the above stated matter, it is Ordered: That the following schedules of rates shall be the maximum rates to be charged by the Georgia Railway and Power Company, for gas metered on and after January 1st, 1922, and until the further order of this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwise provided for.

For the first 10,000 cubic feet $1.65 per 1,000 cubic feet.
" " next 20,000 " " 1.60 " " " " .
" all over 30,000 " " 1.55 " " " " .

Discount: Subject to 10 cents per 1,000 cubic feet discount, if bills are paid on or before the 10th of the month.

Minimum Monthly Charge, $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point, and surrounding territory.

Rate: $1.75 per 1,000 cubic feet per month.

Discount: Subject to 10 cents per 1,000 cubic feet disvount, if bills are paid on or before the 10th of the month.

The Company will continue, as heretofore, to furnish the Commission detailed monthly reports as to operations of its Gas Department.

By order of the Railroad Commission of Georgia:

(Signed) C. M. CANDLER,
Chairman.

(Signed) ALBERT COLLIER.
Secretary.

25 Office of the

Railroad Commission of Georgia,

Atlanta.

December 30th, 1921.

Before the Railroad Commission of Georgia.

File No. 13946.

In re Gas Rates of THE GEORGIA RAILWAY AND POWER COMPANY in Atlanta and Vicinity.

BY THE COMMISSION, Commissioner Boifeuillet, favoring a lower valuation and lower rates, dissenting:

This inquiry was instituted by the Commission of its own motion and is as to the reasonableness and justness of the gas rates of the Georgia Railway and Power Company, effective in Atlanta and vicinity since June 1st, last.

In response to the Commission's Rule the Company has set up, in detailed inventories and appraisals, what it claims is the present fair value of its property used and useful in its gas business and upon which it claims it should be allowed a reasonable return.

It has also submitted under oath detailed operating reports setting up revenues and operating expenses, which it claims show results requiring increased rates rather than revision downward, in order that it may receive a reasonable return, and make good losses alleged to have been heretofore incurred under rates prescribed by the Commission.

We have found nothing to criticize in the strictly operating reports of the Company. Its gas business seems to have been economically

and intelligently managed and the best results possible under pres
conditions, obtained.

We do not agree, as will later appear, to the rate or amount
the annual depreciation charge claimed and set up by the Compa

"Fair Value" or Rate Base.

The basic question or fundamental problem in this and in
rate cases is the "fair value" of the property necessarily used a
useful in the public service.

"We hold, however, that the basis of all calculations as to
reasonableness of rates must be the fair value of the property be
used for the convenience of the public." Smythe vs. Ames. 1
U S. Supreme Ct. Reports. P-466.

We know of no judicial authority anywhere which disputes
soundness of this principle. It is universally recognized. The ci
tion of scores of authorities is not necessary.

When "Fair Value" is to be Ascertained.

In the Consolidated Gas Company case, 212 U. S. Repo
26 page 19, the Supreme Court of the United States said:

"And we concur with the Court below in holding that
value of the property is to be determined as of the time when
inquiry is made regarding the rates. If the property which lega
enters into the consideration of the question of rates has increa
in value since it was acquired, the Company is entitled to the ben
of such increase."

Concurring authorities in this principle are so numerous t
citations are unnecessary.

How "Fair Value" is to be Ascertained.

In Smythe vs. Ames, 169 U. S. the Supreme Court said:

"We hold, however, that the basis of all calculations as to
reasonableness of rates, must be the fair value of the property be
used for the convenience of the public. And in order to ascert
that value, the original cost of construction, the amount expen
in permanent improvements, the amount and market value of
bonds and stock, the present as compared with original cost of
struction, the probable earning capacity of the property un
particular rates prescribed by statute, and the sum required to m
operating expenses, are all matters for consideration, and are to
given such weight as may be just and right in each case. We
not say that there may not be other matters to be regarded
estimating the value of the property. What the Company is enti
to ask is a fair return upon the value of that which it emp

for the public convenience. On the other hand what the public is entitled to demand is that no more be exacted from it * * * than the services rendered * * * are reasonably worth."

In the Minnesota Rate Cases, 230 U. S. p. 434, the same high Court said:

"The ascertainment of value * * * is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevent facts."

While we can find no Georgia court deliverance suggesting methods of ascertaining fair value, nor any statutes in express language prescribing the method, yet to our minds strongly implied directions are given this Commission, in Code Section 2664, as follows:

"The Railroad Commission of Georgia shall have authority to ascertain the cost of construction and the present value of properties in Georgia owned by said corporations or companies. * * *"

We can conceive of no practical use to be made of such information except in prescribing rates and it appears to us that the plain implication is that in estimating present value for rate making purposes the cost of original construction or acquisition should be given consideration.

There are scores of court decisions and commission reports discussing the methods of ascertaining fair value for rate making purposes. They vary widely and one can find respectable authorities for sustaining almost any view.

27 In 1914 the Massachusetts Public Service Commission, under statutory direction, practically held that the deciding and controlling factor in fixing value for rate making purposes, was the actual investment. It seems to us that the Supreme Court of the United States had two years previously, in the Minnesota Rate Cases in terms settled this point, in the following deliverance:

"It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment. If that has been reckless or improvident, losses may be sustained which the community does not underwrite. As the company may not be protected in its actual investment, if the value of the property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner cannot be deprived without due process of law."

Another view, which we are frank to admit has had and is receiving approval in many court decisions, is that Reproduction cost new, less accrued depreciation, or estimated replacement cost of the plant as it stands at the time of the inquiry, based upon unit

costs prevailing at such time, should be the controlling or con clusive factor in arriving at an estimate of present fair value o the physical plant.

The Company substantially contends for the application of thi method in this case.

Mindful of the approval of this method of valuation by a numbe of Court authorities, we cannot concur in the belief that this is, a this time and under existing conditions a just and reasonabl method of estimating "fair value."

We do not mean to say that reproduction cost based upon price current at the time of the inquiry should not receive consideratio by the valuator—they should—but only as one of the relevan factors.

In our judgment the true rule is laid down in Smythe vs. Ame supra, and in the Minnesota cases, where it was said value was t be estimated through the exercise of a reasonable judgment havin its basis in a proper consideration of all relevant facts, "and to b given such weight as may be just and right in each case."

The human race is only recovering from an experience the lik of which the world never before endured, a world war—a world up heaval—an economic cataclysm. There are no stable measures o value today.

We cannot give our approval to the proposition that it is eithe just or reasonable to shut out from consideration in the valuatio of a plant every factor except that of reproduction as of today, usin unit costs of today, prevalent today because of conditions whic never existed before and doubtless never will again.

Replacement cost as of today capitalizes at the public expense thes abnormal conditions, even now changing, and ignores condition under which this plant was constructed, before they became ex istent.

Mr. Luick, an engineer who impressed us as capable and honest
assumes conditions, facts and expenditures which were no
28 and could not have been cost factors in the construction o
this plant, to impose which on the public at this time, unde a supposition replacement theory, is not reasonable.

The exercise of a reasonable judgment as to present "fair value" requires, however, some consideration of such facts as well as o original construction cost.

We do not believe that "present fair value," is synonomous wit "present replacement cost," particularly under abnormal or condi tions in flux.

Our own Supreme Court, in so far as we know, has never ruled o this particular question. Until it does, and so holds, we feel con strained to follow what appears to us a plain common sense exercis of judgment with consideration of all factors going to show value.

In our judgment the "fair value" of this gas plant at this time fo rate making purposes may be reasonably approximated by considera tion, in the absence of any evidence as to original *approximated b consideration, in the absence of any evidence as to original* or his torical cost, of replacement cost under normal conditions as o

January 1st, 1914, immediately preceding price disturbances by war, plus the actual construction cost of additions, extensions and betterment since that date. In so doing there is sufficient recognition of conditions existing during this period and now.

The Fair Value of the Porperty Thus Estimated.

The application of this method in this case is not difficult because of the fact that there is in evidence an appraisal made as of January 1st, 1914, by the well and widely known engineering firm of Parsons, Klapp, Brinckerhoff and Douglas for Drexel and Company, Bankers, financing for the Company, then and now.

The conditions under which this appraisal was made, that is by the use of normal unit costs at a time when there were no violent price disturbances by a firm of such high character, under employment by Bankers lending large sums on the property, appear to give it especial value.

The reproduction or replacement cost new of the physical properties thus made as of January 1st, 1914, was $3,897,992.

The record shows that from January 1st, 1914, to this time the Company has actually expended in new construction, additions, extensions and betterments chargeable to capital account the su-, of $1,088,222, plus the book cost of the Decatur gas property, $78,322, making a total of $4,984,536, undepreciated. In the present case Mr. Brinkerhoff estimated the precentage condition of the physical properties as 88.6% on September 30th, 1921, applying which leaves $4,416,299 for these properties, as of December, 1921.

29

Going Concern Value.

A utility plant with an established business attached is more valuable than one without business and following our precedents in such cases as this, we are of the opinion that ten per cent of the value of the naked physical properties is a fair allowance for what is known as "going concern value."

Working Capital.

In 1914, Mr. Brinkerhoff estimated that $195,163 was necessary as working capital in the conduct of the Company's business. A gas plant must carry certain materials in stock and must also carry many of its customers' accounts for periods of thirty or forty days and to meet these necessities must always have invested in materials and in outstanding accounts a considerable cash sum. This Commission has generally estimated this necessary sum as approximately ten per cent of one year's gross revenue.

Under prevailing conditions and for a gas utility we are of the opinion that this is at this time somewhat underestimated. Using the same relative figures as did Mr. Brinkerhoff in 1914, we believe an allowance of $266,677 for working capital is adequate.

Adding these sums, $441,629 to cover added value in the physical

plant as a "going concern," and $266,677 for working capital, the total estimated sum for the plant and working capital at this time is $5,124,605.

Allowing for additional appreciation in the Decatur properties, in land in Atlanta, and other appreciable items, we are of the opinion that the "fair value" as of December 30th, 1921, of the gas properties of the Georgia Railway & Power Company being used in the public service, including working capital, is $5,250,000, and that this sum should be used for the present as a Rate base.

The Commission has previously used as a rate base the sum of $4,533,635, estimated, however, as a minimum value as of December 31st, 1920. Since this estimate was made, under orders of this Commission, the Company has spent $397,443 in additions and extensions.

For the first time the Commission has had submitted to it a detailed inventory and appraisals and is therefore in a position to estimate values more accurately than heretofore.

30 Franchise Values.

The Company has contended that there should be included in its rate base large values for its franchises, the original of which was granted by the State Legislature without charge. This claim we have not allowed in our estimates.

These franchises, it is true, are taxable and are taxed as property, but it is also true that the taxes paid thereon are repaid to the Company in the rates it charges the public.

The public having granted these franchises in order that it might be served shoulc not be required to pay a return on them as Company property in addition to returning to the Company in rates every dollar of taxes it pays. The public taxes the Company; the Company charges the tax back to the public and the public repays it in rates.

It seems to us that the process should stop at this point.

Operating Results under Existing Rates.

Having ascertained what in our opinion is the present fair value of the property, it is now in order to ascertain operating results under the existing rates.

The maximum net base rate now in effect is $1.65 per thousand cubic feet.

This rate was made effective June 1st, last, but inasmuch as the Company has in use several thousand prepay meters which have to be readjusted to each change in rates and as these changes required time in making, many of them operated at the rate in effect prior to June 1st.

Again the regular charge meters are read all thru a calendar month, while bills are sent out only as of the first of the month. Because of these two conditions operating results for June, nominally under the rate effective June 1st, do not actually indicate June op-

erating results on the $1.65 rate. While six months have elapsed since the $1.65 rate became nominally effective and while we have studied and analyzed results for these six months, our conclusions have been based upon operating results for five months, July to November inclusive, as more nearly and accurately indicating actual earnings under the $1.65 rate. It would be noted however, that within this latter period practically three summer of light consumption months, July, August and September are included, as against two winter or heavy consumption months, October and November. As overhead charges, such as taxes, office expenses, insurance, depreciation, etc., continue practically constant whether sales are light or heavy, a study of the five months mentioned indicates somewhat smaller net returns than if the study had been, say, of six months, July-December, inclusive.

31 In our study of the operating results we have revised the sums reported by the Company as charged to operating expenses on account of taxes and current depreciation. The original tax charges included items of $2,152 Federal Income Tax for 1920 and $56,704 Federal Income Tax for 1921.

The first of these items, $2,152, while paid in 1921, was a charge against 1920 and should not have been charged to 1921. We have eliminated it from the 1921 operating expenses. The second item, $56,704, was an estimate of 1921 Federal Income tax based upon the percentage rate being discussed by Congress at the time of the estimate, 12½ per cent.

The tax as finally fixed by Congress was only 10% and hence the estimate of $56,704 for 1921 was 20% high. We have therefore deducted $11,340 from the original estimate for 1921.

Current Depreciation.

The Company claims that it should be allowed a composite percentage of 2½% annually, on the fair value of its physical properties, to cover depreciation growing out of constant use and not provided for or not in ordinary repairs and maintenance.

We know of no authority anywhere which denies a proper allowance for current depreciation. But in our opinion a composite percentage of 2% on the undepreciated fair value of the physical properties is an ample allowance for a gas plant in Atlanta. We base this conclusion very largely on the testimony of Mr. Luick, for the Company, who went into the subject quite at length, and while he allows 2½%, we believe this to be an over estimate, according to his detailed explanation of physical facts and conditions and conditions in Atlanta and in this plant.

Using 2% as a composite rate and $4,984,536 as the undepreciated value of the Company's physical properties, we have made an allowance for 1921 of $99,690 for current depreciation.

Revised as indicated, accepting as correct all other items reported by the Company, we find results as follows for 5 Mos., July-November, Inclusive, under $1.65 rate:

1921.	Sales.	Gross revenue.	Op. exp., taxes & depreciation
July	91,547,500 c. f.	$156,710.49	$122,426.93
August	100,358,600	166,570.65	129,737.29
September	101,812,300	169,940.49	124,686.29
October	103,131,900	173,987.46	134,244.29
November	112,157,500	186,172.46	138,474.79
Total, 5 Mos.	509,007,800 c. f.	$853,381.55	$649,569.56

32 Net earnings, 5 Mos., $203,811.99, equivalent to 9.31 per cent per annum on the rate base of $5,250,000.

As already stated, we are of the opinion that operating for a 6 months' period ending December 31st, thus including one more heavy consumption month so as to equalize with the three light a against only two heavy consuming months in the above 5 months period, would show more favorable net earnings.

In our opinion a reduction of 10 cents per thousand cubic fee can be justly made in the Company's existing scale of rates, and an order to this effect will be entered. We have given careful con sideration to operating costs, especially as affected by prevailing wage scales and the prices of coal and oil and do not believe tha these permit of any larger reduction at this time. A reduction o 10 cents per thousand cubic feet does not seem large as applied t the individual consumer's account, but on total sales of 1,300,000,000 cubic feet per annum it means a reduction in the Company' gross revenue of $130,000.00.

Amortization of Alleged Losses in the Past.

The Company claims that in the Fall of 1920 and the first par of 1921 it suffered actual out of pocket losses in its gas departmen under the rates prescribed by the Commission, and that for som time prior thereto the rates prescribed by the Commission failed b a large sum to give it an 8% return, and that new rates should b prescribed to provide not only a present 8% return, but also, thr a course of years, to reimburse it for losses under a return of 8% made in the past several years. We do not believe the Commissio has the legal right in prescribing rates for the future to prescrib such as will also provide for the insufficiency of rates in th- past— in substance to make them retroactive.

If the Commission, in fact has this power, the query would aris why amortize losses for the past four or five years and not go bac to 1907 when the Commission first exercised its rate making power as to gas companies and see if earnings between 1907 and 1917 wer not in excess of an 8% return. We understand it to be the dut of the Commission, as far as it can foresee, to provide rates whic will produce a reasonable return, but we do not understand that i or its Creator, the State, guarantees a reasonable return for ever day and under all conditions.

Comparisons of Rates in Atlanta and Elsewhere.

There have been placed in the record numerous comparisons of gas rate in Atlanta with rates in other cities, far and near.

We attach litle value to such comparisons unless acompanied by full information as to the conditions prevailing in other cities.

The measure of a just and reasonable rate for a given utility in one city cannot be determined by the rates in effect for another utility in another city.

The kind of gas sold, the standard required, the materials from which made and the sources from which obtained, the density of traffic, the character of the plant, the methods of operation,
33 the kind of management and other considerations all enter into cost and therefore into rate fixations. Just to file a lot of rate scales with the Commission, without other facts for information to demonstrate their value is of little assistance.

Capitalization of the Property.

In reaching our conclusions we have given absolutely no consideration to the capitalization outstanding on this property. It is wholly immaterial, and has been entirely ignored.

We have tried to ascertain the fair value of the property actually in use at this time; whether this property was paid for out of money contributed by its *w*oners directly from their pockets or paid for out of earnings of the property, in the past, not withdrawn by the owners, as it could have been legally, but put back into the property, is immaterial. As we have already stated in discussing amortization of losses, we are prescribing rates for the present and for the future, the past is gone.

34 United States District Court for the Northern District of Georgia, Northern Division.

In Equity.

GEORGIA RAILWAY & POWER COMPANY and ATLANTA GAS LIGHT COMPANY, Complainants,

vs.

THE RAILROAD COMMISSION OF GEORGIA and Others, Defendants.

The bill of complaint in the foregoing case has been presented to me, read, and considered. Let subpœna issue for the Railroad Commission of Georgia and each of the Commissioners named, and let the same be served upon the Governor and Attorney General of the State of Georgia for said Commission. Let said named Commissioners also be served with a copy of the bill of complaint in this case, and of this order.

Let the defendants and each of them show cause in the United States District Court room at Atlanta, Georgia, on the 7th day of January, 1922, at ten o'clock a. m., or so soon thereafter as counsel can be heard, before such Judges as may be then and there presiding in said matter, why the injunction should not be granted as prayed for.

In the meantime, and until further order of the Court, the defendants and each of them are temporarily restrained against putting order, Exhibit No. 1 to the petition, in effect or from otherwise undertaking to enforce the same by enforcing the penalties or instituting prosecutions for a violation thereof, it appearing from the allegations of the bill that irreparable damage will otherwise accrue to the complainants if they succeed in their contention by reason of the number of their customers, and especially those using prepaying meters rendering it practically impossible to make retroactive adjustments with them.

December 31st, 1921, at Chambers.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Dec. 31, 1921, 9:30 p. m.
O. C. FULLER,
Clerk.

35 In the District Court of the United States in the Northern District of Georgia, Northern Division.

GEORGIA RAILWAY & POWER COMPANY, ATLANTA GAS LIGHT COMPANY, Complainants,

vs.

RAILROAD COMMISSION OF GEORGIA; C. M. CANDLER, Chairman; Paul B. Trammell, James A. Perry, J. D. Price, John T. Boifeuillet, Defendants.

Bill in Equity.

Answer of Defendants.

Now come Defendants, the Railroad Commission of Georgia, C. M. Candler, Chairman, Paul B. Trammell, James A. Perry, James D. Price, Commissioners and in answer to above stated complaint, say:

1.

Defendants admit the allegations made in Paragraphs 1-2-3-4-5-10 and 21 of the bill, except that part of Paragraph 3 which alleges that the Railroad Commission is a "Body Politic." Defendants understand that the Commission is an administrative agent of the Legislature.

2.

Defendants admit the allegations in Paragraph 6 as qualified, to-wit: rates prescribed by the Railroad Commission are maximum rates, which may not be exceeded by complainant. Complainant may charge and collect lesser rates than prescribed, provided that in so doing, no unjust discrimination is worked nor any undue advantage or preference given.

3.

Defendants admit the allegations of Paragraph 7, except as herein qualified: the rates prescribed by the Commission for the Atlanta Gas Light Company, under date of August 14th, 1918, were in the opinion of the Defendants, just and reasonable rates under condi-
36 tions and manufacturing costs existing at the time. Operating expenses, wages and materials prices subsequent to the date of the order largely increased, so that in the opinion of the defendants, said rates of 1918 became inadequate to meet such increased costs. In Defendants' opinion, this became also true as to the new rates prescribed by the Commission on September 20th, 1920, and hence the increased rates prescribed on February 10th, 1921.

4.

Defendants admit the allegations in Paragraph 8, except as herein qualified. In its report accompanying the order of February 10th, 1921, the defendant Commission said, "The public can rest assured that immediately conditions justify a lower rater than is prescribed in this case, the Commission will of its own initiative, give such a condition immediate consideration." In the order itself and as a part thereof, the Defendant Commission incorporated the following paragraph: "The above schedules of rates are made necessary by present prevailing cost and quality of coal and gas oil, and cost of labor. When these costs shall be materially reduced, these schedules of rates will be revised accordingly." In accepting the increased rates prescribed, the complainant made no protest as to the inclusion of this provision in the order, but accepted the rates and the provisions attached.

Almost immediately after the promulgation of the order there came about material reductions in the prices of coal and oil, used extensively by complainant in the manufacture of its gas. Defendants at once sent their Rate Expert on an extensive inquiry, in the coal and oil fields and markets, into the prices of coal and oil and their permanency.

The Defendants intended by the incorporation of the provision above mentioned in its report and order to keep the question
37 of just, reasonable and proper gas rates open so that it could act promptly in its legislative capacity as a rate making body, and to so inform the public and the complainant.

In the meantime the Defendants received petitions for a red tion in the February 10th rates, but declined formally under date March 10th, 1921, to do so, prior to the completion of the investi tion it was then making through its Rate Expert, accountants a Engineer, into the results of operations under the February 1 rates. The concluding paragraph of this March 10th statement w as follows: "The requests before the Commission will be kept on o docket and upon completion of the audit and the gathering of oth information sought, final action on these requests will be had. copy of this action of Defendants was mailed to the complainan No protest as to the Commission's declared form of procedure w made to the Commission, nor further hearing asked.

Defendants deny that the reduction of 25 per M cu. ft. order by the Commission on May 28th, 1921, reduced complainants' re nues $350,000.00.

5.

Defendants admit the allegations of Paragraph 9 of the Bill exc as herein qualified. No petition by any customer or member of t public was necessary to enable Defendants to inquire into the reas ableness and justness of gas rates. Under the law it is within t scope of Defendants' duties to constantly note operating results utilities under its jurisdiction and it can initiate such inquiries on own motion.

In Defendants' order of May 28th, 1921, reducing gas rates cents per M cu. ft. there was the following provision as a part there

"The above schedules of rates are based upon manufacturi
38 and distribution cost as of May 1st, and are subject to revisi
ny the Commission at any time, and on itw own initiati should operating conditions and costs materially change.

The Rule Nisi was issued accordingly.

6.

Defendants admit the allegations of Paragraph 11 of the Bill cept as herein qualified. The appraisals submitted were estimates replacement cost new, and depreciated as of September 30th, 19 using unit costs throughout as of that date. They included also e mates of franchises, so-called "going concern values and alle needed working capital.

7.

Defendants admit the allegations of Paragraph 12 as qualifi The estimates submitted by the engineers showed replacement c new and depreciated as to the physical properties, which replacem costs were arrived at as stated in paragraph 6 of the answer, the s Engineers stated in their opinion this was the present fair value the physical properties.

8.

Defendants deny the allegations in Paragraph 13 of the Bill, that $425,000.00 was necessary as working capital for the Company to perform its duty.

Defendants assert that at this time and under existing conditions the sum of $266,677.00 which is more than 10% of the annual gross earnings of complainants, is ample for working capital. Complainant has contracts for the monthly delivery of coal, for example, which enable it to conduct its business without carrying large stocks, and to pay for the same as delivered.

9.

Defendants deny the allegations of Paragraph 14 except as
39 qualified. Defendants deby that the "so-called going concern value" is property and can be appraised separately and independently as a property item. Defendants admit that the physical property of a going concern with business attached, because of these facts has an added value over that of physical property without attached business, but also assert that an addition to the value of naked physical property of 10% of its undepreciated value, is a fair allowance for such increased value in such physical property in this instance. Defendants also set up that where a utility plant, such as that of the complainants has an absolute monopoly of the business and supplies a product that can be had only by becoming its patron, it is not entitled to add to its physical property values, as large a sum as if it had obtained its business and held the same in competition with another like utility. Defendants deny that the sum of $1,000,000.00 is the fair value attaching to this plant as "going concern value."

10.

Defendants deny that the present fair value of complainants' franchise, alleged in Paragraph 15 of the Bill, to be $1,000,00-.00, is the fair value of the same. Defendants deny that a franchise of this character, granted without charge by the public, in order that it might be served, should be included in complainants' private property for rate making purposes and rates prescribed by the public's agents with a view to paying not only taxes on the same, but in addition, a return on the franchise, as the private property of complainant.

11.

Defendants deny the allegations in the Paragraph of complainant's bill not numbered in the copy served on them, but which would be consecutively, paragraph 16, except as qualified. Defendants deny that during the years mentioned in said paragraph, complainant sustained a loss in its business of more than $1,000,000.00.

40 Defendants deny the power of this Commission, under the law, in prescribing rates for the future, to make the same sufficiently high to reimburse complainant for the losses suffered in past years, if there were such losses.

Defendants deny that they have ruled that complainant was entitled to earn 8% net on its gas properties. Defendants admit that it has held and ruled that under conditions which existed at the time the rulings were made, approximately an 8 per cent return was fair and reasonable. Defendants have never held nor ruled that under all conditions and at all times complainant was entitled to such a return. Defendants assert that while it is of the opinion that the rates prescribed by them under its order of December 30th will earn between 7¼% to 8% net, on a valuation of five and one quarter million dollars, the only method of fairly testing rates is in their application to actual business for a reasonable time. Defendants deny that at this time a return of not less than 7¾% would be confiscatory.

12.

Defendants deny the allegations in Paragraphs 18-25-27-38 and 41 of the Bill.

13.

Defendants deny the allegations of Paragraph 19 of the Bill; except as qualified. Defendants admit the fact that the evidence of engineering experts as to the value of the property was uncontradicted by any other evidence submitted at the October 31st hearing, but deny that defendants acting in a quasi legislative capacity when inquiring into and prescribing rates, are bound to accept such evidence as final and conclusive, without the exercise on their part of any judgment or discretion as to the weight to be given the same, or whether it embraced and included all tests for finding and elements entering into fair value, or without exercising their

41 judgment as to the methods used and testified to.

Defendants deny the implication that there was no other evidence before them than that offered in the hearing- held on October 31st, and November 1st, 1921.

By consent and upon agreement all relevant records in the Commission's office were made usable by the Commission.

14.

Defendants admit the allegations of Paragraph 19 except as qualified. The report made by Prof. Riggs, employed by Defendants, was not an inventory or a detailed or complete appraisal, but was only an approximation estimate made by him, upon a few days' inspection and examination of the plant of complainant.

15.

Defendants admit the allegations of Paragraph 19E, as qualified. Defendants have previously answered that they had not determined that an 8% return was a fair rate, except under conditions existing at the time the rulings were made.

16.

Defendants admit the allegations of Paragraph 20, except as qualified.

Defendants say that the 10 per cent reduction would make a reduction of $140,000.00 in complainant's revenue per year, without reference to its sales. A copy of Defendants' order was handed to one of complainant's Counsel within a few minutes after being drawn and at the earliest possible hour after it was passed by defendants.

17.

Defendants admit the allegations in Paragraph 22. The use of the method herein described resulted in the following estimated "fair value," to wit:

42 Georgia Railway & Power Company.

Valuation of Gas Properties.

Brinkerhoff—Jan. 1st, 1914, Reproduction new, physical properties	$3,897,99
Actual cost additional constructions, extensions, and equipment, Jan. 1, '14 to Dec. 31, '21, as reported by the Company:	
1914	55,48
1915	36,31
1916	65,07
1917	104,06
1918	69,08
1919	67,31
1920	213,44
1921	397,44
	$1,008,22
Total Atlanta	4,906,21
Decatur property as carried on Co.'s books	78,32
Total all physical properties	$4,984,53
Composite percentage condition—88.6%	568,23
Depreciated value	$4,416,29
"Going Concern Value"—10% Physical Property Value	441,62
	$4,857,92
Brinkerhoff 1914 working capital—$195,163—Co. customers—23,704. 1921 customers 32,403—Same ratio as in 1914—$8.23 per customer—1921 working capital	266,67
Total value, including going concern value and working capital	$5,124,60
Plus allowance for appreciation	125,39
Estimated Fair Value	$5,250,00

18.

Defendants deny the allegations in Paragraph 23, except as qual fied. The valuation of Jan. 1st, 1914, made by Engineer Brinke hoff for Drexel & Co., Bankers, referred to in this paragraph was hi estimated "fair value" as of that date as shown in Exhibit No. hereto attached.

19.

For lack of information, the Defendants can neither admit nor deny the allegations of Paragraph 24 as to the value of the "Dollar" in 1914 and now. Defendants deny the allegations of said paragraph that the method used by them in arriving at present fair value was unfair, unjust and unconstitutional and that the
43 order of the Commission, Exhibit No. 1 to the Bill, is illegal and confiscatory.

20.

Defendants deny the allegations of Paragraph 26. The sum set up by complainants as needed for working capital, is excessive and ignores the fact that approximately 13,000 of its customers, or more than one-third of all its customers, use prepay meters and pay for gas in advance of its consumption.

21.

Defendants admit the allegations of Paragraph 28, except as qualified. Defendants deny that complainant, in the true sense, dedicated to the public the gift of a franchise by the public for the specific purpose of serving the public, and can claim a value for such franchise as its private property upon which the public shall pay it a net return.

Defendants deny their power in law to prescribe rates for the future, sufficient also to reimburse the complainant for losses in the past. The prescribing of rates is a legislative act and in the opinion of the Commission cannot constitutionally be made retroactive.

22.

Defendants admit the allegations of Paragraph 29 except as qualified. They deny that complainant is justly entitled to have at least 8% return on its property, including $1,000,000.00 for franchise values and $1,000,000.00 for alleged losses in years past, and a total valuation of $9,500,000.

23.

Defendants deny the allegations in Paragraph 30 of the Bill. Defendants believe that a $2.00 net rate would earn largely in excess of an 8% return upon the fair value of complainant's property.

24.

Defendants deny the allegations in Paragraph 31 of the
44 Bill. Complainant has under-estimated the return on a valuation of $5,250,000.00 for complainant's property under the rates prescribed in Exhibit No. 1 of the Bill. Defendants further deny that either $7,500,000.00 or $9,500,000.00 are fair values.

Defendants made careful estimates as to the results of operations under the $1.65 rate for two periods of time elapsing since their effective date, to-wit: for 6 months, June-November, 1921, inclusive and for 5 months, July-November, inclusive. For the reasons stated in Defendants' report, hereto attached, it used as more accurately showing actual results the 5 months' period. This estimate was as follows:

Georgia Railway & Power Company.

Gas Department.

Operating Results—$1.65 *Base Rate—as Reported by the Company*

Tax & Depreciation Revised.

5 Months—July-November, 1921, Inc.

1921.	Gross revenue.	Op. ex. & depreciation.
July	$156,710.49	$122,426.9
August	166,570.65	129,737.2
September	169,940.49	124,686.2
October	173,987.46	134,244.2
November	186,172.46	128,474.7
	$853,381.55	$649,569.5
Gross Revenue	$853,381.55	
Op. Ex. Taxes & Dep.	649,569.56	
Est.	$203,811.99	—9.54% per annu on $5,124,60 R. B. or 9.31% per annu on 5,250,000.

Based upon the foregoing as to 5 months' earnings under the n base rate of $1.65 per M cu. ft. effective since June 1st, these D fendants believed that said rates could be and should be r
45 duced 10 cents per M cu. ft. and that a net base rate of $1.5 per M cu. ft. would give complainant a reasonable return o the fair value of its property as estimated by Defendants.

The foregoing estimates as to Operating Expenses were arrived as shown in the following detailed items:

Gas Department—Georgia Railway & Power Company.

Operating Expenses.

	July.	August.	September.	October.	November.
Manufacturing	$65,615.70	$84,443.96	$63,192.84	$70,103.93	$76,812.51
Distribution	16,722.68	14,587.71	15,698.29	17,841.94	17,264.80
Coml. Expense	7,642.49	7,824.18	8,305.00	8,235.31	9,233.53
Expense	10,346.16	10,385.79	11,589.04	13,383.56	11,913.46
New Business	1,643.44	1,784.66	1,625.34	1,585.45	1,607.55
	101,970.47	119,026.30	100,410.51	111,150.19	116,831.85
Less Mtnce. Reserve	1,509.67	8,235.80	5,328.99	4,147.34	2,696.15 Plus
	103,480.14	110,890.50	106,739.50	115,297.53	119,528.00
Taxes, Revised for 1921	10,639.23	10,639.23	10,639.23	10,639.23	10,639.23
Depreciation	114,119.37	121,429.73	116,378.73	125,936.76	130,167.24
1/12th of 2% physical value undepreciated $4,984.536 or $99,690.72 per year	8,307.56	8,307.56	8,307.56	8,307.56	8,307.56
	122,426.93	129,737.29	124,686.29	134,244.26	138,474.79

25.

Defendants admit the allegations of Paragraph 32 except as qualified. The conditions set up as to changing prepay meters happen with each and every change in rates and are impossible to avoid unless the effective date of the rate change is several weeks in the future. As changes cannot all be made in a day, with either increases or decreases in rates, there would be losses or gains, in a certain sense, for cer*y*ain customers or the company. The identical situation described in the Bill has arisen heretofore and after conference and argument between complainants' Chief Executive and Defendants, equitable adjustments have easily been made. Complainants must recall these facts and the manner in which
46 similar situations have been met and satisfactorily handled both as to prepay and charge meters, after every rate change.

26.

Defendants admit the allegations in Paragraphs 33 and 34 as herein qualified. Penalty suits for violation of or failure to observe the Railroad Commission's orders are not instituted or brought by it. It can only recommend such suits to the Governor of the State and can only be instituted by his order. The Railroad Commission exercises its power to recommend penalty suits very rarely and only in cases involving wilful and persistent violation of its orders, after notice to and hearing of the offender upon rules nisi.

27.

Defendants admit the allegations in Paragraph 35 of the bill, except as herein qualified.

Defendants have held in the past, that under conditions existing at the times the rulings were made, approximately an 8% return on the then fair value of complainants' property was reasonable. Defendants deny that the 14th Amendment to the Constitution of the United States entitles complainant to such rates as would produce an 8% return. Defendants deny that the valuation of complainants' property as estimated by them is unjust, unreasonably low or that the rates based thereon deprive it of its property without due process, or is confiscatory or denies to it the equal protection of the law, in violation of said 14th Amendment.

28.

Defendants deny the allegations in Paragraph 36 of the Bill, except as qualified. Defendants did find that a composite percentage of 2% per annum on the full undepreciated value of complainants' physical properties was a just allowance for current depreciation, over and above ordinary repairs and maintenance charges.

47

29.

Defendants deny the allegations in Paragraph 37 of the Bill as herein qualified. If there was included in Defendants' estimates of earnings for the months July to November inclusive, any sales at the $1.90 rate which ceased on May 31st, the amount was certainly small and could have no material effect on Defendants' estimated return. It could not have been anything approaching the sum of $30,000 as stated in the bill.

Under date of July 29th, 1921, in a written statement to the Commission, a copy of which is hereto attached as Exhibit No. —, President Arkwright estimates that there was included in June earnings a total of $20,425.64 under the $1.90 accruing before meter changes were made under the $1.65 rate effective June 1st. For this reason the Commission excluded June operating results entirely and only considered July-November inclusive. It cannot be possible that notwithstanding the whole month of June was spent in making meter adjustments, that July revenues included $30,000 of revenue at the rates which ceased May 31st, or nearly $10,000 more than June.

30.

For lack of information Defendants neither admit or deny the allegations in Paragraphs 39 and 40 of the bill.

31.

The remaining paragraphs of the Complainants' bill contain its several prayers as to relief desired. Defendants are informed that specific answer thereto is not required of them.

32.

Defendants further answering attach hereto copies of each and every order and report issued by them in the matter of gas rates of complainant in Atlanta and vicinity from August 14th, 1918 to December 30, 1921, inclusive. Number Exhibits Nos. 4-10 inclusive.

48 These orders, and reports, to which reference is prayed, show the rates prescribed from time to time by Defendants and the bases upon which they were made. There is also attached as Exhibit No. — excerpts from the stenographic report of Engineer Luick's testimony for the complainant as to correct depreciation allowance, to which reference is also prayed.

Wherefore having fully answered complainant's bill, Defendants pray that the prayers of same be denied and that they be dismissed hence without costs.

E. J. REAGAN,
Atty. for Defendant.

49 UNITED STATES OF AMERICA,
Northern District of Georgia,
Northern Division:

GEORGIA,
Fulton County:

Personally appeared C. M. Candler, and James A. Perry, before the undersigned subscribing officer, who on oath say that as members of said Commission, said C. M. Candler being also its Chairman, have read the foregoing answer to the Bill of Complaint filed by the Georgia Railway & Power Company and the Atlanta Gas Light Company in the case stated and that the facts stated there are true.

C. M. CANDLER.
JAS. A. PERRY.

Sworn to and subscribed before me this January 6, 1922.
T. J. JOHNSON,
Notary Public, Fulton County, Ga.

50 EXHIBIT No. 1.

Copy.

Appraisal of Atlanta Gas Light Company as Reported by H. M. Brinckerhoff to the Bankers as of January 1st, 1914.

Appraisal of 1914.

Reproduction Cost New	$3,897,992
Physical Condition 89.2%.	
Reproduction Cost Less Depreciation	$3,477,009
Working Capitol	195,163
Going Value	528,916
Fair Value 1914	$4,201,088

51 EXHIBIT No. 2.

Testimony Luick.

Transcript, pages 26, 27, 28, 29.

I arrived in Atlanta Thursday night of last week, and since I have been here, I have again gone over the physical property of the plants of the Company, and checked particularly the changes which Mr. Smeaton made, and find them to be correct and in accord with my own judgment. I might say in arriving at my deduction for a true depreciation I have considered physical deterioration as well

as functional depreciation of the physical properties. I have considered the actual wear and tear above maintenance and have considered the age of the item, physical decay, and have taken into account the elements of functional depreciation, namely, inadequacy, supersession, and obsolescence, insofar as they have occurred. With respect to distribution system, it is of course physically impossible to examine all of the mains, all the services, and the meters. I have, however, interviewed men in charge of the street department, and have found from them what their experience has been as to the condition of the mains, services, and meters. I have also seen in some openings since I have been here both on the previous occasion and on this visit, samples of the soil in Atlanta. Considering that the mains in Atlanta are for the most part cast iron mains, it is my belief and judgment that there is very little accrued depreciation in these mains. Cast iron mains, when first put in the ground, take on an initial coating of rust, and after this initial coating of rust has been taken on, there is no further depreciation in the pipe except perhaps from electrolysis. I am further informed that the soil in Atlanta has been chemically analyzed, and that it has no alkaline qualities, and consequently does not deteriorate the cast iron pipe. Finally I have been told that the Company experiences practically no trouble with electrolysis in its main
52 system. Taking into account, therefore, my general knowledge of the behavior of cast iron pipe in the ground, and considering the information which I have received, I arrived at the amount of accrued depreciation of the cast iron mains, which I believe to be very reasonable. I may say that I have fixed a condition per cent of 94 percent for the cast iron mains, which in my judgment is very conservative.

Q. Mr. Luick, let me ask you about these figures, condition percentages. These figures, which appear on this statement, represent your judgment as to the correct depreciation on the several items they are attached to?

A. They do. They are stated too, in detail.

Q. As to each individual item of the physical properties?

A. Yes, sir.

Q. What do you put the general condition of the Atlanta property and the general condition of the Decatur property and the general condition of the combined properties?

A. The general condition per cent of the Atlanta property is 88 percent, and that of the Decatur property 96 percent, and the average for all of the combined physical properties is 88 percent.

Q. What does it give as the depreciated reproduction value?

A. That makes the reproduction value of the physical property $6,100,750.00.

53 EXHIBIT No. 3.

Copy.

Georgia Railway and Power Company,

Atlanta, Ga.

July 29th, 1921.

Mr. E. M. Price, Rate Expert,
Railroad Commission of Georgia,
Atlanta, Georgia.

DEAR SIR:

Your letter of July 21st, your file 13946-Gas, was duly received. I send you enclosed statement showing the amount of gas made during the calendar month of June, 1921, and the total amount of Gas registered by the meters during the meter reading period of our June sales. There is no way to state accurately the earnings in our June statement, due to gas sold prior to the first of June.

The total amount of gas sold during June sales was 93,818,800 cubic feet. The average revenue per M cu. ft. of gas sold was $1.8377. If all the gas had been sold at the new rates effective June 1st, we estimate that the average revenue per M cu. ft. sold would have been $1.62. Consequently, if the new rates effective June 1st had applied to the entire June gas sales, the total operating revenue would have been $151,986.45. The actual operating revenue from the sale of gas shown in the statement filed with the Commission was $172,412.09. The difference is $20,425.64. To arrive at what the earnings would have been if the new rate had applied to the June sales, this sum of $20,425.64 should be deducted from the total revenue, and likewise should be deducted from the net operating income.

Yours very truly,
(Signed) P. S. ARKWRIGHT,
President.

54 EXHIBIT No. 4.

Office of the

Railroad Commission of Georgia,

Atlanta.

August 14th, 1918.

File No. 13947.

In re Application of ATLANTA GAS LIGHT COMPANY for Increase in Rates for Gas Service Furnished to Its Customers in Atlanta and Suburbs.

Upon consideration of the record in the above entitled matter and of the evidence and arguments submitted at hearing had thereon, it is

Ordered: That on and after September 1st, 1918, and until the further order of this Commission, the following scale of rates shall be the maximum scale of rates to be charged by the Atlanta Gas Light Company for the class of service indicated:

For the first	10,000	cubic	feet.....	$1.25	per	1,000 cu. ft.
For the next	20,000	"	"	1.15	"	" " "
For the next	20,000	"	"	1.05	"	" " "
For All over	50,000	"	"	.95	"	" " "

Discount: Subject to a 10¢ per 1,000 cu. ft. discount if bills are paid on or before the 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the quality of gas supplied to its customers in Atlanta and vicinity by Atlanta Gas Light Company, shall show an average monthly minimum of 575 B. T. U.; provided that at no time shall it be permissible for said Company to supply its patrons with gas containing less than 550 B. T. U., to be charged for on basis of the rates above set out.

Ordered further: That daily calorimeter tests for the heating value of gas be made, and monthly statements, under oath, be forwarded to the office of the Commission, showing the result of such tests; the tests referred to in this section of the order shall be made at the gas house and also at a point located approximately one mile
55 from said gas house.

Ordered further: That Atlanta Gas Light Company file with this Commission monthly statements showing the result of its operations—that is, receipts, disbursements, etc., in detail, showing also comparison with operations for the same month in the preceding year.

It is hereby expressly declared that the above increases are authorized upon the express condition that the same are necessary because of emergencies arising out of national conditions existing at this time, and upon the further condition that when this emergency shall have passed, the old rates shall be restored upon the order of this Commission.

By order of the Railroad Commission of Georgia:

____ ____,
Chairman.

____ ____,
Secretary.

Copy.

56 EXHIBIT 5.

Before the Railroad Commission of Georgia.

File No. 13946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY for Increased Fares on its Street Railway Lines; for Increased Rates for Electric Current for Light, Power and Other Purposes.

Decided August 14th, 1918.

Order and Opinion of the Railroad Commission.

57 Chas. Murphy Candler, Chairman;
George Hillyer, Vice-Chairman;
Paul B. Trammell,
James A. Perry,
John T. Boifeuillet,
Commissioners.

J. Prince Webster, Rate Expert.
Albert Collier, Secretary.
James K. Hines, Special Attorney.

58 Railroad Commission of Georgia, Atlanta.

File No. 13946.

In re. Application of THE GEORGIA RAILWAY AND POWER COMPANY for Increase in Charges to the Public for the Various Classes of Services Furnished.

August 14, 1918.

Upon consideration of the record in the above entitled case of the facts and arguments submitted at the hearing had thereon, and of the report and opinion this date adopted by the Commission containing its findings of facts and conclusions therein with respect to the issues involved, which said report is hereby referred to and made a part hereof, it is

Ordered: That on and after September 1, 1918, and until the further order of this Commission, the following schedules of rates shall be the maximum schedules of rates to be charged by the Georgia Railway & Power Company, for the classes of services indicated:

SCHEDULE A.

Atlanta, Ga., Residence Lighting Scale.

(Within City Limits, Monthly Basis.)

For the first 100 K. W. H. per month..... 8.88c per K. W. H.
For the next 100 K. W. H. per month..... 7.77c per K. W. H.
For the next 100 K. W. H. per month..... 6.66c per K. W. H.
For the next 200 K. W. H. per month..... 5.55c per K. W. H.
For all over 500 K. W. H. per month..... 4.44c per K. W. H

Minimum monthly charge, $1.11.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE B.

Atlanta, Ga., Commercial Lighting Scale.

(Within City Limits, Monthly Basis.)

For the first 100 K. W. H. per month..... 8.88c per K. W. H
For the next 100 K. W. H. per month..... 7.77c per K. W. H.
For the next 100 K. W. H. per month..... 6.66c per K. W. H.
For the next 200 K. W. H. per month..... 5.55c per K. W. H.
For the next 500 K. W. H. per month..... 4.44c per K. W. H.
For all over 1,000 K. W. H. per month..... 3.33c per K. W. H.

Minimum monthly charge, $1.11.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

59 SCHEDULE C.

Residence and Commercial Lighting Scales, Monthly Basis.

Suburban Districts, Not Incorporated, Adjacent to the City of Atlant, Ga.

Within ½ mile of Atlanta City Limits.

For the first 100 K. W. H. per month.....10c per K. W. H.
For the next 100 K. W. H. per month..... 9c per K. W. H.
For the next 100 K. W. H. per month..... 8c per K. W. H.
For the next 200 K. W. H. per month..... 7c per K. W. H.
For all over 500 K. W. H. per month..... 6c per K. W. H.

Minimum monthly charge, $1.66.
Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

Beyond the ½ mile radius of Atlanta City Limits.

1c per K. W. H. higher than the Half Mile scale for the same class of service.

Minimum charge, $2.22.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE D.

Residence and Commercial Lighting Scale, Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Ga.

For the first 100 K. W. H. per month.....10c per K. W. H.
For the next 100 K. W. H. per month..... 9c per K. W. H.
For the next 100 K. W. H. per month..... 8c per K. W. H.
For the next 200 K. W. H. per month..... 7c per K. W. H.
For all over 500 K. W. H. per month..... 6c per K. W. H.

Minimum monthly charge, $1.33.

Subject to a ten (10%) per cent discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE E.

Residence and Commercial Lighting Scale, Monthly Basis.

Hartwell, Royston, Lavonia, Canton, Bowersville, Duluth, Ingleside Clarkston and Stone Mountain, Ga.

For the first 100 K. W. H. per month.....11c per K. W. H.
For the next 100 K. W. H. per month....10c per K. W. H.
60 For the next 100 K. W. H. per month.... 9c per K. W. H.
For the next 200 K. W. H. per month.... 8c per K. W. H.
For all over 500 K. W. H. per month..... 7c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.

Contract Period, 1 year.

SCHEDULE F.

Residence and Commercial Lighting Scale, Monthly Basis.

Whitesburg, Ga.

For the first 100 K. W. H. per month.....12c per K. W. H.
For the next 100 K. W. H. per month.....11c per K. W. H.
For the next 100 K. W. H. per month.....10c per K. W. H.
For the next 200 K. W. H. per month..... 9c per K. W. H.
For all over 500 K. W. H. per month..... 8c per K. W. H.

Minimum monthly charge, $1.66.
Discount: Subject to a 10% *per cent* discount, if bills are paid on or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE G.

(Within City Limits, Monthly Basis.)

Atlanta, Ga., Retail Power Scale.

For the first 100 K. W. H. per month..... 5.55c per K. W. H.
For the next 400 K. W. H. per month..... 4.44c per K. W. H.
For the next 500 K. W. H. per month..... 3.88c per K. W. H.
For the next 1,000 K. W. H. per month..... 3.33c per K. W. H.
For the next 3,000 K. W. H. per month..... 2.77c per K. W. H.
For all over 5,000 K. W. H. per month..... 2.22c per K. W. H.

Discount: Above rates subject to a 10% discount, if bills are paid on or before the 10th of the month.
Minimum Charge: 75c per H. P. connected, but not less than $2.00 net per month.
Contract Period, 1 year.

SCHEDULE H.

Retail Power Scale, Monthly Basis.

Suburban Districts, Not Incorporated, Adjacent to the City Limits of Atlanta, Ga.

Within ½ mile of Atlanta City Limits: 1c per K. W. H. higher than Atlanta Retail Power scale.
Beyond ½ mile radius of Atlanta City Limits: 2c per K. W. H. higher than Atlanta Retail Power scale.
Minimum charge, $1.00 per H. P. connected, but not less than $3.00 per month outside of city limits.

61 SCHEDULE I.

Retail Power Scale, Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollto
Hartwell, Canton, Royston, Lavonia, Bowersville, Duluth, Clar
ton, Stone Mountain, Ingleside, and Whitesburg, Ga.

1c. per K. W. H. higher than Atlanta City retail power rates; wi
minimum charge of $1.00 per H. P. connected, but not less th
$3.00 per month.
Contract Period, 1 year.

SCHEDULE J.

Heating and Cooking Scales, Monthly Basis

Atlanta, Ga.

Within City Limits: 4.44c. per K. W. H.
Minimum Charge, $1.66 per month.
Outside City Limits: 5.55c. per K. W. H.
Minimum charge, $2.22 per month.
Discount: Subject to a 10% *per cent* discount, if bills are paid
or before the 10th of the month.
Contract Period, 1 year.

SCHEDULE K.

Primary Hydro-Electric Rates, Industrial.

Applicability: All territory served by the Company.
Basis for determining Maximum Monthly K. W. Demand:

(The actual maximum demand for any month, during the c
tinuance of the contract shall be taken as the average rate of usi
electrical energy by the consumer, during any thirty (30) minu
period in such month in which electrical energy is used by the c
tomer at the highest average rate of demand. Peak demands, due
short circuits or accidents to machinery, or momentary starting
motors, shall not be counted.)

Rates.

Service Charge: $1.11 per K. W. of Maximum Demand per month, us an energy charge as follows:

or the first 10,000 K. W. H. per month .....1.33c. per K. W. H.
or the next 10,000 K. W. H. per month.....1.11c. per K. W. H.
or the next 10,000 K. W. H. per month.....0.88c. per K. W. H.
or the next 20,000 K. W. H. per month.....0.66c. per K. W. H.

or the next 50,000 K. W. H. per month.....0.55c. per K. W. H.
or all over 100,000 K. W. H. per month.....0.44c. per K. W. H.

Discount: Above rates subject to 10% discount if bills are paid on before 10th of the month.
Minimum Monthly Charge: K. W. of Maximum Demand Charge.
Contract Period, 1 year.

SCHEDULE L.

Primary Hydro-Electric Rates.

Central Station or Municipal, Monthly Basis.

Applicability: All territory served by the Company.
Basis for determining Maximum Monthly K. W. Demand—Same Industrial Rates—Schedule K.

Rates.

Service Charge: $1.66 per K. W. of Maximum Demand per month, us an energy charge as follows:
(Same as energy charge for Schedule K. Subject to same dis-unts.)
Minimum Charge: K. W. of Maximum Demand Charge.
Contract Period, 1 year.

SCHEDULE M.

Secondary or Dump Power Rate Scales.

Applicability: All territory served by the Company.
By secondary or dump power is meant power which the company ay be able to deliver in excess of the power required, reserved, sold supplied as primary power, and the company reserves to itself the ght to shut off or discontinue, or to resume the delivery of said condary power at its option.
(This scale does not apply to reciprocal contracts entered into ith other power companies.)
Rate: .00833 cents per K. W. H.

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Yearly Guarantee, $13.33 per H. P. connected.
Discount: Above rates subject to 10% discount if bills are paid
or before 10th of the month.

SCHEDULE N.

Seasonal or Rural Rate Scales.

Applicability: All territory served by the Company.
(This service is applicable for gins and other industrial develo
ments operating only a part of the year.)

63 Rates.

Service charge for those months when connected $1.11 per K. W
of Maximum Demand, plus energy charge as follows:

For the first 10,000 K. W. H. per month.....1.33c. per K. W. H
For the next 10,000 K. W. H. per month.....1.11c. per K. W. H
For the next 10,000 K. W. H. per month.....0.88c. per K. W. H
For the next 20,000 K. W. H. per month.....0.66c. per K. W. H
For the next 50,000 K. W. H. per month.....0.55c. per K. W. H
For all over 100,000 K. W. H. per month.....0.44c. per K. W. H

Discount: Above rates subject to 10% discount if bills are paid
or before 10th of the month.
Minimum Monthly Charge: K. W. of Maximum Demand Charg
Contract Period, 1 year.

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Decatur and surrounding territory.

For the first 10,000 cu, ft.....$1.25 per 1,000 cu. f
For the next 20,000 cu. ft..... 1.15 per 1,000 cu. f
For the next 20,000 cu. ft..... 1.05 per 1,000 cu. f
For all over 50,000 cu. ft..... .95 per 1,000 cu. f

Discount: Subject to 10c per 1,000 cu. ft. discount if bills are p
on or before 10th of the month.
Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the Georgia Railway and Power Compa
file with this Commission, monthly statements showing the result
its operations—that is, receipts, disbursements, etc., in detail, sho
ing also comparison with operations for the same month in the p
ceeding year.
It is hereby expressly declared that the above increases are auth
ized upon the express condition that the same are necessary becau
of emergencies arising out of national conditions existing at this ti
and upon the further condition that when this emergency shall ha

assed, the old rates shall be restored upon the orders of the Commission.

Ordered further: That the Georgia Railway & Power Company be, nd the same is hereby directed, to amend its customer contracts so as o provide in a heavy black border a notice to its customers substantially in accord with the following, said notice to be shown immediately preceding the contract provisions:

Special Notice.

The rates stated in the following proposal or contract are subject o change by the Railroad Commission of Georgia, in the manner rescribed by law, at any time. In the event of such change the new ates prescribed by the Railroad commission will apply from the date nade effective, for the unexpired term of this contract.

Ordered further: That the Georgia Railway & Power Company e and the same is hereby directed to print on the back of bills rendered to its various customers the rate schedules, upon which the mount of the bill shown on the opposite side has been calculated.

Ordered further: That the Georgia Railway & Power Company e and the said company is hereby directed to print all of its rate chedules, rules and regulations under which service is to be furnished, and that a copy of such publication be posted in the office f the company at each point where it conducts a general business; nd also one copy filed with the Mayor or Clerk of Council of the arious cities in which the company operates, so that the public may ave free and easy access to the rate schedules, rules and regulations f the company as offered to the public in the conduct of its business ith the public.

Ordered further: That the scale of rates heretofore obtaining in onnection with ceiling fans be and the same is hereby cancelled; n future such service to be furnished on the regular lighting and ower scales according to character of service wires to customer's remises.

Ordered further: That the Georgia Railway & Power Company be nd the same is hereby authorized and required to discontinue the urnishing of free service, such as supplying lamps, or renewals hereof, etc.

Ordered further: That the Georgia Railway & Power Company be nd the said company is hereby directed to cancel all preferential ontracts, and all customers using the same class of service shall be laced on the same schedule as above contemplated.

By order of the Commission:

C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

65 Railroad Commission of Georgia, Atlanta.

File No. 13946.

In re Application of GEORGIA RAILWAY AND POWER COMPANY f
Increased Fares on Its Street Railway Lines, for Increased Rat
for Electric Current for Light, Power and Other Purposes.

Before the Railroad Commission of Georgia.

Atlanta, August 14, 1918.

By the COMMISSION:

Applicant is a corporation under the laws of Georgia engaged
operating street railway service in Atlanta, Kirkwood, Decatur, E
Point, College Park, Hapeville and Gainesville, Georgia. It is al
engaged in serving the public in these cities and contiguous territo
with electric current for heat, light and power uses.

Its services of this character also cover practically all of Nor
Georgia, including forty-six towns, besides a large number of mil
manufacturing plants and industries.

Embraced in these services is the furnishing of current to vario
municipalities for the pumping of water and other public uses, a
for light and power to numerous public institutions, hospitals, arm
posts and camps. A number of the industries served are largely e
gaged in the manufacture and supply of Government war materia

Applicant operates five hydro-electric plants, four steam plants, a
also purchases current from five or six other plants. It generat
and purchased, in 1917, 258,607,882 K. W. H., of which 222,517,6
K. W. H. were accounted for in revenue deliveries.

It operates in Atlanta and vicinity 224 9/10 miles of electric str
railway and 7½ miles in Gainesville. Its Atlanta and suburb
lines consist of 68½ miles of single track and 156¾ miles of dou
track.

Applicant has in service 352 miles of high tension transmissi
lines, 198 miles of which is on steel towers, and 324 miles of d
tributing lines, a total of 676 miles of transmission and distributi
lines. It has developed water and steam powers, aggregating 16
800 H. P.

The important relation which the applicant sustains toward t
industrial and commercial welfare of practically all of North Geor
is evident.

66 In addition to its developed water powers, it owns un
veloped water powers of more than 400,000 H. P., so that
potentialities in the future growth of North Georgia are great.

This Commission is convinced that this section of Georgia is vita
concerned in the ability of applicant to meets its responsibility
the Trustee of these great industrial resources, and to this end
should receive at the hands of the public and governmental agenc
fair and unprejudiced treatment. And the fact that the control

the Company is in other sections of the country should not prejudice it.

The water powers developed by these interests and now dedicated to useful public service, for centuries past remained undeveloped and wasted by Georgia owners and interests. This State has need of outside capital in the development of its great resources. It has cordially invited it into its service. Surely then, no different treatment should be accorded it, coming on our invitation, than is given home capital. And besides, such governmental agencies as this Commission, and the public, should bear in mind that hydro-electric developments are comparatively new ventures for capital in this country, and attended with more risks than attach to such long established ventures as steam powers.

Water sheds may be denuded of forests; droughts may and do come; electricity itself is as yet a mystery to the greatest of experts, and instrumentalities in its generation, distribution and practical applica-ion are not fully perfected, and may within a brief period become obsolete and out of date.

Such considerations indicate that during the development and constructing periods of such enterprises, where risks of loss of capital are great, some measure of considerate, if not liberal, treatment should be extended toward venturesome capital.

This Commission at least is so impressed and shall undertake, therefore, to deal with this application in such a spirit.

And, especially so, under the abnormal conditions now prevailing in this country and throughout the world.

In a recent similar inquiry, the Indiana Public Service Commission aptly said:

"With the outbreak of the European war and, later, with our entrance therein, there have come conditions wholly beyond the previous imagination of any man. As if overnight, we suddenly have been catapulted from an era of economic tranquil-ity into a maelstrom of economic revolution—the path of which has enveloped the entire industrial and commercial activities of the nation. There is no longer such a condition as normality of business, and almost every industry or commercial institution finds itself facing critical problems for which there are no landmarks or guide posts."

67 Applicant alleges that because of these abnormal conditions created by the war; because of the large increase in the cost of labor and of every material and supply used by it in supplying service to the public, and in taxes which it is required to pay to various jurisdictions, its operating expenses have been and are being so increased, that it is no longer, under existing rates, able to meet its fixed charges and taxes, provide for the reasonable conservation of its properties and secure such a return upon the value of its property devoted to the public use, as will maintain its credit and secure additional capital with which to promptly and efficiently meet the public demand for its essential services, and that out of these conditions there has arisen an emergency in its business, for which, in the in-

terest of the public as well as of itself, relief is asked in the way
increases in fares and rates. It is alleged that fares and rates esta
lished under normal, pre-war conditions, as reasonable and just, a
now unreasonably low and do not afford fair return, and that the
insufficiency is so marked as to invite disaster or a break down in i
public service, unless prompt relief is given for the period of the
abnormal conditions.

Applicant submitted voluminous evidence in support of its alleg
tions.

The City of Atlanta, other interested communities, and numero
individual patrons of the petitioner, protested against the grant
the application, but submitted practically no evidence, contentin
themselves with the submission of studies and analyses of the ev
dence submitted by applicant, and arguments contending that th
petitioner had not sustained its application.

The evidence submitted makes obvious the fact that the busine
of applicant has been directly and seriously affected by prevailin
abnormal conditions.

The war has created such enormous demands by our Governme
and its European Allies for man power, materials, industrial e
sentials, food and capital, that the supply in this country is not equ
to our largest needs, and prices and costs have soared.

The Commission knows this—every one knows it—every time o
makes a purchase of an article of necessity or luxury, the fact is em
phasized. Among the principal elements entering into the cost
petitioner's services are labor, steel and iron essentials, metalic su
plies and fuel.

Without halting as to prices, it is difficult, and at times impossibl
to obtain these essentials in quantities or as needed.

Increases in the cost of essentials in applicant's business run fro
fifty to four hundred per cent.

The evidence in this case (the common knowledge of all of us co
roborating) shows large increases in the wages paid both comm
and skilled labor, a large item in the cost of rendering applicant
public services. Increased cost arises out of the inefficiency and u
certain character of much of the labor now obtainable.

Moreover, it is common knowledge that the existing wa
68 scales of petitioner, and other like corporations in the Sout
must and will be considerably increased, possibly with a retr
active effect, because a living wage only will meet living costs.

On page 21 of one of the Protestants' briefs Counsel says:

"We are going to assume that the Commission will not grant
emergency increase in rates which were voluntarily made by the Co
pany, and which have been in force for a number of years, witho
protest at least on the Company's part, unless it is shown that th
net income produced from these rates is materially less now than
has been throughout the course of these years."

This assumption would have been quite reasonable, but for th
omission of some suggestion or condition as that "the necessary i
vestment or amount of property being used in the public service

maining the same, and the net income of previous years producing sufficient funds to provide for current depreciation and soome appreciable adequacy of return upon fair property values."

If, for example, the plant being used in the public service in 1918 has been increased fifty per cent since 1912, would not a larger sum as "net income" be justified?

It is, of course, entirely possible for "net income" to even increase over previous years, and still be insufficient to properly care for the property and maintain the company's credit by such fair returns upon its legitimate and actual capital outlay as it is entitled to in law and good conscience.

Another consideration, in this connection, appears to us should have weight.

Today's business, industrial and financial conditions are abnormal. It is difficult to obtain large new capital for even the most promising ventures. The Federal Government, desirous of conserving capital for governmental needs, is discouraging and in some instances forbidding bond flotations for capital uses.

This Company is bound in law to supply as far as it can the public demand for the services it has undertaken to render. This Commission is vested with power to compel the rendition of adequate service and to order reasonable extensions and enlargements of its facilities and plants. The Commission has knowledge, through complaints filed with it and the undisputed evidence in this case, of the inadequacy of the Company's existing plants and facilities to meet the present demands for its services. The business interests of this section will suffer if they are not adequately served. The Company has been unable to secure new and needed capital, under war conditions, for the enlargement of its existing plants or the construction of new plants upon its undeveloped water power sites.

69 The insufficient supply of steam coal restricts steam power developments, and enforced methods of conserving coal evidence the wisdom and necessity of a larger use of our valuable and readily available water powers. It is readily seen, therefore, that such rates as will provide only a fair return upon the fair value of the property of this Company now in public service and which are fair to the public and not in excess of the value of the services rendered, because of the abnormal conditions prevalent, are really a necessity and this irrespective of the "net income" of past years, in order that the demands of the public may be met by increased facilities constructed out of such earnings, which under normal conditions would be distributed as dividends.

Protestants have insisted that the existing rates of Petitioner with economical management have been and are bringing in revenue sufficient to meet operating expenses and taxes and provide a fair return upon the fair value of the property used by the public. Counsel contend further that the claims of the Company for depreciation are excessive, and that the record does not contain such information as to the character, age, uses, etc., of its properties as will enable the Commission to ascertain what is a reasonable allowance for depreciation.

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It is further argued that in view of the fact that the Company h not in the past set up a depreciation reserve and has gotten alo without such, it cannot now claim that the necessity for a depre ation reserve is an emergent cause for an increase in rates.

This Commission is fairly well acquainted with the properties petitioner. Since the Company's first organization down to date has had occasion to frequently make exhaustive inquiries into eve phase of its business and its operations, the character and extent its properties, their development and uses, its capitalization a actual values, and the financial results of its operations. Notwit standing this, under normal conditions, an inventory and apprais of the Company's properties and an expert audit and analysis of revenues and expenses would be desirable, if not a duty.

Such a course at this time, in view of the Commission's compar tive familiarity with the petitioner's business and properties, and b cause of the time necessary and the large expense which would be i curred, does not seem justified.

The Commission is abundantly satisfied that it can, without di ficulty, arrive at a very conservative estimate of the minimum valu of the property of this company in the public use. The Compan may complain at our use of a minimum value, rather than the fa value, but certainly the public cannot. Such value may be es mated by some of the methods approved by the Supreme Court of t United States, and we, of course, are not confined in such an inqui to the one method of estimated reproduction new and depreciated.

This Commission, nor any other that we know of, takes outstan
ing capitalization as the fixed measure of values. The op
70 market value of such capitalization, however, may be consi
ered in an inquiry into values and should be weighed.

No Commission, certainly not this, prescribes rates, however, bas solely upon capitalization. It is the fair value of the property in u that measures the rate, coupled with the value of the service to t public. Cost of the property is not and should not be used as t sole or exclusive method of arriving at values. It does, howeve throw light on such an inquiry and should be weighed.

With a fairly approximate estimate of the minimum value of t property, it is not impossible to arrive at a fair and conservati estimate of what amount should be allowed annually on the pro erty as a whole, for depreciation and obsolescence, without detail estimates as to each unit, the time in use, probable life, etc. The are several other accredited methods of estimating annual d preciation, based upon observation and experience throughout t country with similar properties. The maintenance of the proper of the petitioner has been high, and in the allowance for annual d preciation hereinafter made, this fact has been considered.

As to the advisability, if not the necessity, in the interest of goo continuing service to the public, as well as of justice to the owners the property of a fair depreciation allowance, this Commissi entertains no doubt. Only recently it declined to approve a d tribution of surplus earnings by this same petitioner, until provisi

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had been made for depreciation, and reaffirmed the principle that rates should provide therefor.

Protestants have insisted that applicant's claims that an emergency confronts it which requires prompt relief by increased rates, have not been sustained, and that in fact there is not an emergency.

An "emergency" is defined as an unforeseen occurrence, or a combination of circumstances which call for immediate action or remedy.

If because of war, the operating expenses of a public utility are increased to such an extent (with reasonable certainty that still further increases are inevitable) as that after paying the same, the remaining revenues are insufficient to provide for the reasonable preservation of the property in use, the payment of governmental charges such as taxes, public improvement assessments, interest on lawfully issued bonds, contractural obligations such as reasonable rentals for property used and necessary in its business but not owned, and such a reasonable return upon owned property in use as will sustain its credit, a combination of circumstances apparently exists which calls for immediate action or remedy. It follows that when such a combination of circumstances no longer exists, the necessity for emergency relief ends. Emergency rates, therefore, should be temporary and only for the period of the abnormal conditions which necessitate them.

A claim for temporary emergency rates must not be used as a means of securing an unreasonable or an unjust return, nor
71 with the purpose thereby of the permanent establishment of higher rates. The conditions of war will not be selfishly capitalized by public utilities with the consent of this Commission, nor shall they be used as a cloak under which to secure returns larger than those to which they are justly entitled. This is a period of national sacrifice and public utilities, like individuals, should be willing to forego such returns as are not necessary to meet operating expenses under careful and economic management, provide for fixed charges, contractural obligations and governmental charges, keep their properties in efficient operating condition and adequacy, and maintain their credit to the end that essential capital for additional facilities to meet the public demands or needs may be secured upon reasonable terms.

And the public should bear in mind that what might be a reasonable return upon a government bond or bank stock or the stock of an established industry producing some staple necessity, cannot be used as a measure of return which a public utility such as a combined street railway and electric generating and transmitting corporation should be permitted. The latter has contingencies, which must be measurably anticipated and properly out of earnings, or it will suffer disaster.

A street railway may in any year, be called upon to contribute large sums under paving assessments, for example, as to which it is not consulted; over which it has no control, and the expenditure in which does not increase its business nor add a penny to its revenue.

The laying of a sewer or change in the grade of a street, as has

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been often seen in Atlanta, may necessitate the taking up of its rai and the entire reconstruction of its tracks, without adding anoth dollar to its revenues.

A sleet storm in winter or a hurricane in summer may break dow scores of miles of wire and poles and necessitate the rebuilding miles of expensive transmission and distribution lines, which cann be charged to capital account. Such incidents may conceivably ha revenues for the time and add to normal expenses simultaneousl They are so recurrent as almost to have become certainties rath than contingencies, and hence has been widely recognized the justi of the claims of such utilities as this, that the normal rate of retur allowed them should be somewhat higher than that of more stabiliz business.

This application and our action thereon concerns and affects a ve large number of people, as well as the petitioner. Not all of the publ are informed as to the established principles which must control i rate making for public utilities.

In the nature of things, it is without knowledge of the amount an character of the large and scattered properties devoted to its servi and the large amounts of capital invested therein, by th applicant.

72 The foregoing general observations have been made wit the hope that perhaps they may reach some of the public an convey some idea of the magnitude of the interests involved in th inquiry and of the necessity, which this Commission has striven appreciate, of dealing with it from an impartial standpoint and wi the fullest obtainable knowledge of the underlying facts.

Property Values.

In the following estimates, the Commission has separated the pro erties owned by the Georgia Railway and Power Company, and tho leased by it from the Georgia Railway and Electric Company, an later consolidated them into one complete property as operated b the Georgia Railway and Power Company. We have not unde taken to arrive accurately at actual values, but have estimated mi imum values.

We have used as bases of these estimates, as to the separate pro erty of Georgia Railway and Power Co.—(1) original plans and es mates submitted, under oath, to the Commission in the original ca ital application of this Company when organized and (2) swo detailed statements of actual costs of acquisition, development an constructions made from year to year, submitted in bond applic tions filed with the Commission.

Some items of these costs were deemed excessive and the fu amounts reported have been reduced, in our estimates, by more th $1,000,000. We have excluded undeveloped properties, not i mediately needed in its public service; (3) the open market quo tions of the the outstanding stock and bonds of the Company. Bon of the Company are not allowed to be issued for the full cost of t construction, but only for 80 and 85 per cent of actual costs. T

basis indicates the opinion of investors as to value. In this estimate we have excluded from capitalization outstanding Bills Payable even where claimed to represent capital expenditures, although the market quotations on outstanding capital stock anticipate the payment of Bills Payable, before there can be any application of Company assets to the liquidation of stock.

As to the separate property of the Georgia Railway and Electric Company, we have used,

(1) A detailed inventory and appraisal of its property as made March 18th, 1912, by W. A. Baehr, a consulting engineer of high reputation and character, made for the Georgia Railway and Power Company upon its lease of these properties. In passing upon one of the applications of the latter for approval of a bond issue, the attention of the Commission was called to an item of over $31,000.00 for the making of this inventory and appraisal, which it was asked should be capitalized.

This was denied. The Commission has called for this Inventory and has carefully studied the same. Made under the circumstances it was, by an Engineer of Mr. Baehr's standing, we attach
73 value to it, and excluding "going concern" value included by Mr. Baehr, we have used it as a basis.

Unit prices now are much higher than in 1912 and a fair appraisal based on 1912 unit costs cannot be considered excessive in 1918.

To this we have added amounts for new construction, year by year, since 1912, as sworn to and submitted to the Commission in detailed statements in Bond applications:

(2) The open market quotations of the outstanding stock and bonds of the Company. Bonds are allowed for only 75 per cent of the cost of new construction. It should be remembered that values as indicated by the market quotations of capitalization include all the assets of the Company, among these the capital stock of the Atlanta Gas Light Co., and the Atlanta Northern Railway.

Estimates of the values thus made are as follows:

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Georgia Railway and Power Co.

Property and Development Costs, Excluding Undeveloped Properties Known as Etowah, Newnan, Inter-state, and South Carolina Water Power Sites.

From Detailed, Sworn Statements as Submitted to the Railroad Commission, with Certain Overhead Expenses as Reported Excluded in Part as Excessive.

(Cents Omitted.)

1. Expenditures to October 31st, 1916, under contract of Northern Contracting Company with Georgia Power Company:	
(*a*) Acquisition and development at Tallulah Falls, Mathis and Tugalo	$5,042,037
(*b*) Transmission lines, rights of ways, etc.	1,422,971
(*c*) Sub-stations, Transformer Stations, Equipment, etc.	676,571
(*d*) Telephone lines and equipment	99,221
(*e*) Distribution systems	11,207
(*f*) 20% allowed on above to cover over-head charges, including engineering, contractors' profits, law, organization and general expenses, and interest during construction	1,450,401
Total allowed expenditures to October 31st, 1916, under Northern Contracting Co. contract	$8,702,408
2. Other new constructions, made directly or purchased by Georgia Railway & Power Co., as per detailed statements in file, between March 17th, 1912 and October 31st, 1916, less items aggregating $97,326, questioned by the Commission	$1,762,198
74	
3. Additional acquisitions and new constructions by Georgia Railway & Power Company, direct or purchased, between October 31st, 1916 and December 31st, 1917, as per detailed statements on file	1,024,124
4. Atlanta Water & Electric Co. property and development (known as Bull Sluice), purchased	1,500,000
5. Blue Ridge Electric Co. properties and development, including Dunlap Shoals	1,135,000
Total, excluding franchises, going value, and undeveloped properties not immediately needed for public service	$14,123,730

Leased Properties.

Georgia Railway & Electric Co.

1. Inventory and appraisal, March 18th, 1912, by W. A. Baehr, Engineer, made for the Georgia Railway & Power Company, for use in connection with lease of the properties from the Georgia Railway & Electric Co.:

(*a*) Reproduction, new, of physical properties.	$15,716,445
(*b*) Estimated condition, March 18th, 1912, 95.35% making depreciated value as of March, 1912	$14,985,885
(*c*) To which add new acquisitions and constructions, chargeable to Capital Account, made between March 18th, 1912 and December 31st, 1917, as shown in sworn detailed statements filed with the Railroad Commission	3,617,010
Total Georgia Railway & Electric Company property, going value and franchises excluded	$18,602,895

(*d*) In addition to the foregoing, there are included in the lease to the Georgia Railway & Power Company, the Atlanta Gas Light Company and the Atlanta Northern Railway. These are not included in this valuation.

Consolidated Costs and Estimated Minimum Values.

Georgia Railway & Power Company and Georgia Railway & Electric Company as Jointly Operated, Excluding Atlanta Gas Light Company, Atlanta Northern Railway Company, and Undeveloped Water Power Sites, Except Tugalo.

June, 1918.

75	Georgia Railway & Power Company owned....	$14,123,730
	Georgia Railway & Electric Company leased...	18,602,895
		$32,726,625
	Assuming condition as of June, 1918, considering high maintenance expenditures and recent completion of Georgia Railway & Power Company development, to be 95%, deduct for Accrued Depreciation.....	1,636,331
	Leaves as indicated present minimum value of physical properties, (Franchises and so called Going Value, excluded)	$31,090,294
	To which add necessary cash working capital, 10% of 1917 operating revenues	666,365
		$31,751,659

This Commission does not approve of the method of attempting to segregate and attach specific items of value, as "Going Value," but it believes that there is added value in physical properties which have been unified, adapted and adjusted to special uses and for specific purposes, and assuming that the foregoing costs and estimated values are the "naked" or "bare bones" minimum values of merely the physical properties under consideration, and that some consideration should be given to the fact that actual cash was paid for certain of the franchises of the Georgia Railway & Electric Company, the present value of the properties owned, leased and operated jointly or as one going concern, in our opinion, is not less than $35,000,000.

Market Value of Capitalization as Bearing upon Present Fair Value.

June, 1918.

Georgia Railway & Power Company.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
1st Preferred	$2,000,000	75	$1,500,000
2nd "	10,000,000	13	1,300,000
Common	15,000,000	9	1,350,000
Total	$27,000,000		$4,150,000

Bonds.

1st and Refunding	$12,971,500	78	$10,177,770
Blue Ridge Elec. Co.	236,500	87	205,755
Atlanta Water & Elec. Co.	1,400,000	87	1,218,000
Savannah River Power Co.	200,000	87	174,000
Total	$14,808,000		$11,715,525

Georgia Railway & Power Company.

Stocks and Bonds.

	Outstanding.	Market value.
Total Stock	$27,000,000	$4,150,000
Total Bonds	14,808,000	11,715,525
Total Stock and Bonds	$41,808,000	$15,865,525

This capitalization does not include outstanding Bills Payable. It does include all of the property of the corporation, developed and undeveloped and leaseholds.

Georgia Railway and Electric Co.

Stock.

Description.	Amount outstanding, par.	Market quotation.	Market value.
Preferred	$2,400,000	79	$1,896,000
Common	8,514,600	113	9,621,498
Total	$10,914,600		$11,517,498

Bonds.

Description.	Amount outstanding, par.	Market quotation.	Market value.
Ga. Rwy. & Elec., 1sts...	$5,760,000	89	$5,126,400
" Refunding & Impr..	4,292,000	85	3,648,200
Atlanta Consols.....	1,900,000	95	1,809,000
Atlanta St. Rwy.....	225,000	90	202,500
Ga. Elec. Lgt. Co.....	1,350,000	90	1,215,000
Total	$13,527,000		$12,001,100

Stock and Bonds.

Georgia Railway and Electric Co.

	Outstanding.	Market value.
Total Stock.....	$10,914,600	$11,517,498
77 Total Bonds	13,527,000	12,001,100
Total Stock and Bonds	$24,441,600	$23,518,598

This capitalization does not include Bills Payable. It does include stock ownership of allied companies, such as Atlanta Gas Light Company, as also franchises, leased to the Georgia Railway & Power Company.

Consolidated Market Values of Capitalization.

Georgia Railway & Power Co., and Georgia Railway & Elec. Co.

Georgia Railway & Power Company.....	$15,865,525
Georgia Railway & Electric Company.....	23,384,123
Total, ...	$39,384,123

The foregoing does not include Bills Payable for Capital Account. It does include all properties developed and undeveloped, owned and leased, including franchises of the two concerns.

1917 *Operations.*

Having undertaken to arrive at the minimum value of the properties, as a whole, used and useful in the public service, the Commission undertook to ascertain the financial results of their operation for the year ending December 31st, 1917, under existing rates.

The following statement is fairly approximate:

Georgia Railway & Power Company.

Revenue and Expenditures, All Departments.

1917.

(Cents Omitted.)

Operating Revenues		$6,663,657
Operating Expenses		3,524,248
Net Operating Revenue		$3,139,408
Non-operating income, including		
Dividends Atlanta Gas Lt. Co.	$165,170	
Miscellaneous	154,954	
		320,124
Total		$3,459,532
Less Taxes Paid		485,549
Total Net Income		$2,973,983
78 Less depreciation:		
In view of high maintenance heretofore claimed, supported by Engineer Baehr's condition report in appraisal of 1912, 2½ per cent on total value of physical properties, for Annual Depreciation and obsolescence, seems reasonable, viz:		
2½% on $31,090,254		777,256
Remainder of Net Income		$2,196,727

Available for Rentals, other fixed charges, contingencies and return on the fair value of the property and cash working capital devoted to the public use:

Equivalent to

6.91 per cent on estimated minimum value of naked physical properties and working capital	$31,751,659
Or	
6.15 per cent on estimated minimum value of unified and adapted properties, $35,000,000 and cash working capital, $666,000	$35,666,000
Or	
5.57 per cent on value as indicated by open market quotations of outstanding capitalization	$39,384,123

N. B.—Included in the remainder of Net Income, Supra, $2,196,727, is $165,170 of Dividends from Atlanta Gas Light Company. Net Income should therefore be reduced by this sum or the value of the Property in use increased by the value of the Atlanta Gas Light Company property which in another proceeding we have estimated at the minimum of $3,500,000.00.

Deduction of the net income to the Georgia Railway & Power Company from the Gas Light Company property not included in valuation, $165,170 from the total net income of $2,196,727 of all owned and leased property after allowance for Depreciation leaves $2,031,557

Equivalent to

6.39% on estimated minimum value of naked physical properties and working capital of $31,751,659

Or

5.69% on estimated manimum value of unified and adapted properties and working capital $35,666,000

Assuming that the rental paid Georgia Railway & Electric Company is no more than a fair return on the value of the leased properties, and that being a contractural obligation which must be paid, and further assuming that the annual interest charges of the Georgia Railway & Power Company on Bonds lawfully issued must be paid, and that the sum of the two constitute no more than a fair
79 return on the values of the combined properties, and are payable out of net income, the following result of operations appear:

Disposition of Remainder of Net Income Based upon Actual Fixed Charges of Georgia Railway & Power Co.

1917.

Remainder Net Income, all sources, after provision for estimated Annual Depreciation, Supra		$2,196,727
Less fixed charges, viz:		
(*a*) Contract rental for leased properties, Georgia Railway & Electric Company.	$1,605,572	
(*b*) Interest on Bonds and Notes, Georgia Railway & Power Co.	745,823	
		2,351,395
Deficit		$154,668

Working Capital.

In the foregoing statements we have allowed as necessary working capital, $666,000.00, or approximately 10 per cent on gross operating revenue. This is in line with experience and observation. The accounts of the Company of supplies usually carried and cash actually used clearly show that this allowance is not too high.

Depreciation.

The allowance for Annual Depreciation, 2½ per cent on the estimated value of physical properties used, we are satisfied is not too high. We reached this conclusion after a study of approved tables as to the average life of the more important items constituting the properties, and from an examination of numerous estimates used by various other State Commissions on similar properties.

Georgia Railway & Electric Company Rental.

The rental paid Georgia Railway & Electric Company for the properties, rights, franchises, etc., leased from it amount to $1,605,572 in 1917.

The properties leased include all of the railway, electric light and power lines and systems and all of their equipment within a seven mile zone measured from the center of the City of Atlanta, and also the Capital Stock of the Atlanta Gas Light Company and the Atlanta Northern Railway, (the Marietta inter-urban line) and equipment, and the office building in Atlanta known as the Gas and Electric Building.

Taxes have been assumed and are paid by the Lessee, the Georgia Railway & Power Company.

In our treatment thus far, it is contemplated that Depreciation is also cared for by the Lessee, so that the contract rental of $1,605,572, just as paid and without any question of the items going to make up the same, is a clean net return to the owners of the Georgia Railway & Electric Company for the use of their property.

We have estimated the naked physical properties of the Georgia Railway & Electric Company as of a minimum value of $18,602,895 to which adding $3,500,000 for the Atlanta Gas Light Company, and $500,000 for the Atlanta Northern Railway Company, we have $22,602,895, as the minimum value of the physical properties leased to the Georgia Railway & Power Company. In addition, $465,678 of other assets were turned over with the leased physical properties, making, in all, $23,068,573. If there be recognized any additional value in the properties for unification and adaption and for Franchises for which the public made or makes charges the value of these leased properties at this time can hardly be less than $25,000,000. A net rental therefore of $1,605,572, or 6.42%, in our opinion is not unreasonable, considering the character of the business and properties and the many contingencies which may ma-

terially affect earnings. Holding this view, we do not see how can do else than allow the full amount of the contractural rental a legitimate charge deductible from "Net Income," as in the mediate preceding statement of "Disposition of Net Income."

Interest on Bonded Indebtedness.

The deduction of $745,823, aggregate of interest charges of Georgia Railway & Power Company, in our opinion is a pro deduction from Net Income. The Bonded Indebtedness of the C pany has been lawfully issued: it was approved by this Commissi it represents 80 and 85 per cent of the cost of acquisition and velopment of the properties: it does not in our opinion exceed minimum value of the property against which issued.

Assuming that the contractural rental obligations of $1,605,8 paid the Georgia Railway & Electric Company is not more tha fair return upon the value of its leased properties, and that it is of a return which can be properly charged to the public (in ot words that the public should allow only this return from rates t that the Georgia Railway & Power Company is not entitled to return as Lessee, in addition to the fair return to the Lessor), and

Assuming that the interest paid on Georgia Railway & Po Company bonds is a return on the value of its property measu by the par value of outstanding bonds, and

81 Assuming, still further, that provision for Annual D preciation is essential and necessary for the conservation the property and the continuance of efficient service to the pub the Company experienced a deficit in 1917.

The whole question as to the financial results of the applica operations for 1917, depends upon the allowance, if any wh should be made for depreciation.

Depreciation can be, as a matter of fact, postponed. When t is done, the Company, at once, begins adding to its liabilities. D ferred maintenance and postponed depreciation are liabilities, siduous in character, because there does not happen to be a credi who insists on payment as his debt is due, and the debt piles up w compound interest, until on the day of reckoning, disaster is realiz

We know of no manufacturing or industrial establishment wh machinery, and developments, structures and constructions of ev character, except for some items like dams, forbays, buildings, e are so liable to depreciation or so quickly liable to become obsolesc or out of date as an electric plant. Doubtless its reservoirs a steadily filling at this time with sand and mud, and in time th capacity will be so reduced as to require dredging.

Plants of this character are like men, they grow old—they cay—they are relegated or scrapped, as out of date and no lon able to keep step with the lengthening stride of progressive art.

We therefore adhere to our own previous conviction and p edents, and provide an allowance for depreciation and obsolesce and as we have opportunity, from time to time, shall see that s allowance is properly expended in keeping these properties in an

to date, efficient condition. We do not believe 2½% on the estimated minimum value of the property as a whole is too high.

We do not believe the applicant is facing bankruptcy.

We are impressed however, with the fact that serious problems of financing confront it, and that upon their prompt solution, depends in a large degree, its ability to render the vitally important services the public demand of it.

The industrial welfare of this community and of the section of North Georgia it serves, to say nothing of its relation to National demands and necessities, is in a large degree dependent upon the efficiency, adequacy and dependability of applicant's service.

Careful study of the results of the Company's operations for six months of 1918, which the Commission has required subsequent to the hearing, shows more favorable results than were anticipated in estimates by the Company during the hearing.

82 But in an inquiry of this character and by a body of this character, the Commission believes that it is not only proper, but its duty, to take notice of well known and officially known facts and action thereunder by governmental bodies.

For example, the National War Labor Board has only very recently put into operation, with retroactive effect, increased wage scales in a number of street car systems, among the number the New Orleans Railway & Light Company. The scale made effective on that system carries a smaller percentage of increase than on several other systems upon which increased wage scales were ordered.

This Board now has before it controversies involving minimum living wage scales in Atlanta, as also Birmingham and Memphis.

The awards of the Board in these cases can be anticipated with almost absolute certainty.

If the New Orleans scale, which on account of local conditions was not increased so largely as have been others, is made effective in Atlanta, it means an increase in the total annual wages to be paid by applicant to conductors and motormen, of $250,000 to $350,000, according to the proper construction to be put on certain applications provided for in the New Orleans award.

If any increase is given conductors and motormen, corresponding increases must be allowed all other employees, such as machinists, carpenters, linemen, foremen, inspectors, track help, etc., and such an increase means an additional $250,000.

This Commission cannot shut its eyes to such facts nor refuse them consideration.

Taking therefore, a comprehensive view of the entire situation as shown and officially known to the Commission, and of all conditions existing and confronting applicant, and of the actual result of its operations for the past eighteen months, and estimated results for the near future under a continuance, which seems certain, of existing abnormal operating conditions, and the growing demands of the public for services which seem essential to its welfare, we feel that temporary relief in the form of somewhat higher rates should be granted.

OSE IN CENTER

Power and Jurisdiction Over Street Railway Rates.

It is our conviction that such emergency relief as seems necessary should be spread throughout all the rates covering the entire business of the Company.

The Commission finds itself, however, confronted with a grave and difficult question of jurisdiction and power as to affording any of such relief through increases in applicant's street railway rates.

83 Section 5 of the Act of the General Assembly approved August 23rd, 1907, increasing the membership and powers of the Commission, is in part as follows:

"The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged so that its authority and control shall extend to Street Railroads, and Street Railroad Corporations, Companies or persons owning, leasing or operating street railroads in this State:

"Provided, however, that nothing herein shall be construed to impair any valid subsisting contract now in existence between any municipality and any such company: and provided that this Act shall not operate as a repeal of any existing municipal ordinance."

* * *

The physical existence of a contract in 1907 between the town of Decatur and the lessor of applicant, prescribing a five cent maximum fare between Decatur and Atlanta is admitted. A similar contract between College Park and applicant's lessor, was in existence.

The Georgia Railway & Electric Company obtained its Atlanta franchises under an Ordinance of the City of Atlanta, approved February 8, 1902, known as the "Consolidating Ordinance." This ordinance contained the terms and provisions upon which the consolidation of the street railways therein named could be made. It was accepted by the Georgia Railway & Electric Company. The proposition of the City and its acceptance by the Company constituted a contract, which contract was in existence in 1907.

The "Consolidating Ordinance" does not, in direct terms prescribe rates. It, however, contains this provision:

"The said Consolidated Company shall for the purpose of giving one continuous ride inside the City of Atlanta from a point on one of its lines to a point on another of its lines, which, however, does not carry the passenger on a parallel line or in the same general direction from which he came, grant one transfer ticket upon the payment of one full fare, provided such transfer is requested at the time of the payment of the fare."

At that time the universal fare throughout the City upon each and all of the lines embraced in the Ordinance was five cents. A "full fare" must have meant the then prevailing fare. To compel

the grant of transfers and at the same time throw no restrictions upon an increase in the primary rate would have been to leave the way open to nullify the free transfer, by increasing or doubling the original and customary charge without transfers.

But whether this be the correct view as to what was a "full fare" or not, it is immaterial to a proper conclusion as to the
84 grant of the prayer of petitioner for authority to charge two cents for a transfer; to grant it, would to that extent, repeal the consolidating ordinance under which the petitioner is now op-era-ing.

The ordinances and contracts relating to rates and transfers, which from the evidence appear to us to have been physically existent on August 23rd, 1907, when jurisdiction as to street railways was conferred upon this Commission, are with the City of Atlanta as to fares and transfers within the City of Atlanta; with the town of Decatur as to fares between that town and Atlanta; with the town of Edgewood as to fares between that town and Atlanta, and with College Park as to fares to Atlanta. Transfer charges were not covered in the Decatur and College Park contracts, nor are fares or transfers, outside of the City of Atlanta covered or affected except as mentioned above.

The question as to whether the contracts physically existent were or are valid contracts is not for us to decide. This Commission is not a judicial body; and so is this true as to the validity of the City and town ordinances. On their face they purport to be ordinances. The Courts only can say whether they are valid, whether ultra vires, or not.

Our view is that when in dealing or considering dealing with the rates of a street railroad, under the terms of the Act of 1907, we come face to face with a contract or an ordinance, in existence on August 23rd, 1907, still subsisting, we are estopped until such obstacle is removed in a legal procedure before a Court of competent jurisdiction, or the General Assembly further acts.

The question before us, is not whether these cities and towns had power and authority to make contracts or pass ordinances fixing or prescribing fares, but whether or not the General Assembly has empowered this Commission to deal with these fares, in the event it finds such contracts or ordinances actually existent.

The General Assembly, in our opinion, could have delegated such power and authority, but as a matter of fact, it appears not to have done so.

This jurisdictional question has been referred to the Special Attorney of the Commission and we have been furnished with his opinion to the effect that we are without power to set aside contracts or ordinances of the character mentioned, under the conditions of the proviso already quoted.

The Commission has adopted this opinion as its own. A copy thereof is attached to this statement and made a part hereof. (Exhibit A.)

Under the conclusion we have reached on this subject, we do not deem it wise or proper to prescribe a different fare on parts of applicant's lines, and not upon all.

85 Recommendation of City Authorities.

This Commission believes that applicant is entitled to an increase in its street car fares, and that a six cent fare would be reasonable and just, so long as existing abnormal war conditions prevail, and the justice of granting such increases by amendment to existing contracts and ordinances, is earnestly urged upon the Councilmanic authorities of Atlanta, Decatur, and College Park, with the assurance on the part of this Commission that simultaneously with the effective date of such amendment, similar provisions will be made by it as to fares in territory not included in the municipalities mentioned. The Commission does not recommend any charge for transfers.

This recommendation does not apply to the subject of fares to Camp Gordon, so long as it is used as a Military Camp. We have not reached a definite conclusion as to this, because of certain considerations of the national service the thousands of soldiers in that camp are rendering.

In connection with this subject it may be of value or of interest to state that the Commission has through its Rate Expert made inquiry of official sources in every City in the United States containing 100,000 population and over as to increases in street car fares granted or applications for which are pending.

There are sixty such cities.

Increases have already been granted in the following: Bridgeport, Hartford and New Haven, Connecticut; Boston, Cambridge, Fall River, Lowell and Worcester, Massachusetts; Kansas City and St. Louis, Missouri; Camden, Jersey City, Newark, Patterson and Trenton, New Jersey; Cleveland and Toledo, Ohio; Portland, Oregon; Pittsburgh, Reading and Scranton, Pennsylvania; Providence, Rhode Island; Milwaukee, Wisconsin; and Tacoma and Spokane, Washington.

Petitions to the proper authorities are now pending in Birmingham, Alabama; Los Angeles, and Oakland, California; Denver, Colorado; Indianapolis, Indiana; New Orleans, Louisiana; Detroit, and Grand Rapids, Michigan; Minneapolis and St. Paul, Minnesota; Omaha, Nebraska; Albany, Buffalo and New York, New York; Cincinnati, Dayton and Columbus, Ohio; Memphis, Tennessee; Richmond, Virginia; and Seattle, Washington.

Fourteen of the Cities of this class have no rate increase petitions pending or failed to answer our inquiries.

In Georgia, the Mayor and Council of Macon, have, by ordinance, amended the franchise ordinance of that City by granting a six-cent fare, in lieu of the five cent fare heretofore in effect.

This information seems to indicate that the conditions upon which the Georgia Railway & Power Company bases its application, are nation wide and not peculiar to this community.

The jurisdictional question as to street railroad fares, discussed in the foregoing, in our opinion, does not affect the issue as to electric light and power rates, nor in the remotest degree, limit the power of this Commission to deal therewith.

The existing rates in the City of Atlanta were the result of negotiations in 1912 between the City authorities and the Power Company and were then prescribed, by agreement and acceptance, in a City ordinance.

The scale of rates so prescribed by the City and accepted by the Power Company, were filed with this Commission. No request by the City or by the Company, was made of this Commission for its assent to the ordinance or contract prescribing the same, nor has this Commission at any time given formal assent thereto, or do other than recognize them as de facto rates.

Without regard however to this fact, the proviso in the Act of 1907, limiting the powers of the Commission, relates expressly and solely to street railroads.

The rates prescribed in 1912 were under vastly different conditions, affecting the cost of service, than those existing today. The Power Company's main hydro-electric development had only begun. It was not completed until 1916. Its cost exceeded estimates. It has been found necessary, recently, to operate steam auxiliary plants oftener and for longer periods during the dry seasons than had been anticipated. The cost of coal has increased until the mere coal cost alone of generating one K. W. H. with steam is, today, approximately one cent. This cost is exclusive of every other item of generating, distributing and operating expense.

A careful study of the existing scale of rates shows inequalities and discriminations in the structure. Some rates are relatively low, others high. The average of rates, under the existing scale, is low.

Comparisons of electric rates prevalent in different cities is frequently misleading, and sometimes difficult because of the varying methods of stating them. Conditions prevailing in different cities are so distinctive as to seriously affect the value of such comparisons.

The character and nearness of fuel supplies; the source of generating power whether steam or water or both combined; the distance of the generating plant from the distributing market, and other local conditions, all affect the value of comparisons of prevailing rates.

There are also many prevalent theories as to rate construction. Because of the character of its business one company will build its rate structure so as to secure its largest revenues from one class or another,—another company is forced to meet peculiar or distinctive competition. Such comparisons however, bearing in mind these and similar considerations, have some value.

87 The Rate Expert of the Commission has prepared, from official sources of information, a statement of the prevailing rates in every city of the United States having a population of 100,000 or over, there being sixty such.

Because of the varying methods of stating rates, Mr. Webster has taken a representative customer of each class of customers in each city, such as residential, commercial lighting, retail power and wholesale power, and basing these upon a certain fixed relation as to installation and amount of energy consumed, (the classification being the same for each city), worked out the amount that would be paid in each city by such customers. These figures show startling differences, and considered in this manner alone, are not of much value. But the ultimate charge to the Community as a whole, taking all classes of customers into consideration, is of value, and he has stated these results.

This study shows that, taking the average of all the rates, which is what the supplying company obtains for its services from the Community, Atlanta has the third lowest average rate in cities in the United States of 100,000 population and over, the figures for the three lowest being:

Los Angeles, Cal.	1.088 per KWH
Oakland, Cal.	1.311 per KWH
Atlanta, Ga.	1.316 per KWH

The scale proposed by applicant in its petition, which we have not approved, would place Atlanta as the twelfth lowest of the cities mentioned. The aggregate additional revenue from light and power rates petitioned for is approximately $400,000.00. We have estimated under the rates which will be promulgated in our order in this application, aggregate additional revenue of approximately $190,000.00.

We consider the existing commercial lighting scale in Atlanta as high compared with the other classes; and feel constrained to revise these rates downward.

The Company has in Atlanta approximately 10,950 residence lighting customers; about 3,545 commercial lighting customers and 1,375 retail power customers.

It has in its entire territory approximately ninety wholesale (primary) power customers and twelve (secondary) wholesale power customers. It has thirty-one municipal (primary) power and sixteen seasonal power customers.

Power customers secure current because it is more economical than other sources of power available to them. They buy it expecting to make a profit by its use. Its cost is charged, in the end, to the people who consume their products.

They are not forced to use electrical current. Steam power is available as a substitute. They are not therefore solely dependent upon electric power, and can dispose with its use whenever
88 the steam substitute is more economical. The use of electric current for lighting homes and residences is not a use for profit; it is an expense. This is true as to all artificial light in residences. The scale of prices which we shall issue provides therefore for larger percentages of increase in all power rates than in residential lighting rates.

We consider under today's conditions that the residential lighting

rates in Atlanta are low and they have been slightly increased. With the exception of residence lighting rates, all of the rates of the Power Company have been heretofore stated in a complicated way, so that the average layman or citizen has difficulty in understanding them. We have undertaken to state the rates we shall prescribe, in a form more easily understood by the average customer of the Company, even if less scientifically stated. The record in this case has developed a number of low, preferential wholesale power rates.

Such preferential rates are illegal and by their discontinuance, increases will follow. The Company should never have given them. The Commission has not found it desirable, because of the numerous inequalities and discriminations found existent in the Company's present scale, to provide for addition revenue with a flat percentage increase in rates, applicable to all classes of its customers.

Much against our inclination and desire we have been compelled to make some revision in the classes, in order that discriminations might not be aggravated and perpetuated. Our utilities regulation law abhors unjust discriminations. They are inherently wrong. As far as practicable we have tried to remove them in our revision.

Emergency Rates.

The scale of rates herewith prescribed is intended to meet what we believe are legitimate needs of the applicant for additional revenue brought about by existing abnormal war conditions.

It is not intended to be accepted as permanent.

When normal conditions shall have been restored, or whenever in the opinion of the Commission desirable, a more exhaustive and detailed inquiry into the property values and the operating results of the Company, will be made and such further revision in rates as seems reasonable and just, will follow.

89 EXHIBIT A.

Opinion of Judge James K. Hines, Special Attorney to the Railroad Commission, on Question of Jurisdiction.

Atlanta, July 17th, 1918.

Railroad Commission of Georgia,
Atlanta, Georgia.

GENTLEMEN:

Has the Railroad Commission of Georgia, jurisdiction and power to fix passenger rates for the Georgia Railway & Power Company?

Clearly under the Act of 1907, this power is conferred upon the Commission, unless the case falls within the proviso in Section 5 of said Act.

This proviso is as follows: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and

provided, that this Act shall not operate as a repeal of any existing Municipal ordinance."

If the Commission fixes passenger rates for this company, will this action impair any valid, subsisting contract, which was in existence between that company and the City of Atlanta on August 23rd, 1907, the date of the approval of said Act of 1907, which placed street car companies under your jurisdiction?

To deprive the Commission of jurisdiction in this matter, such contract must be a valid, subsisting contract; it must have been in existence on August 23rd, 1907, and the action of the Commission in fixing passenger rates for this company must impair such contract.

The "Consolidating Ordinance" of the City of Atlanta, approved Feb. 8th, 1902, is dual in its character, being both an ordinance of the City and a contract between the City and the Company, by which were consolidated the street car lines therein mentioned. This ordinance contained a proposition to the street railway, setting out certain terms and conditions upon which the consolidation of the street railways therein named could be made the acceptance of which by the street railway company constituted a contract.

City Rwy. Co. vs. Citizens' St. R. Co. 166 U. S. 557.
Detroit vs. Detroit Citizens' St. Rwy. Co., 184 U. S. 368, 386, 387.

It is hardly open to question, that this ordinance and its acceptance by the Georgia Railway & Electric Company constitute a contract, which was in existence at the time the Act, enlarging the powers of the Railroad Commission, was passed.

90 Then the question arises, is this contract a valid contract?

In Chapter two, Art. 6, Sec. 1, Div. 4, of the Civil Code, providing for the Charter of street railway companies, it is declared, "That no street railway, incorporated under this division, shall be constructed within the limits of any incorporated town or city without the consent of the corporate authorities," and "That all such street railroad companies incorporated under this division shall be subject to all just and reasonable rules and regulations by the corporate Authorities."

Cicil Code, Section 2600.

The Georgia Railway & Power Co., and its predecessors, were incorporated under this law. The Charter of the latter was granted on January 28th, 1902.

Charters and Franchises 173.

So both of these companies accepted the privileges and franchises granted them in their charters, "Subject to all just and reasonable rules and regulations by the Corporate Authorities" within whose limits they operate. This is a broad and sweeping provision. It embraces all just and reasonable regulations of both construction and operation.

Now, with this power of regulation conferred upon Municipalities

this company obtained and accepted the ordinances under which it operates.

But it is contended, that the contract, if in fact there be one, between the City of Atlanta and the Street railway company, embraced in the Consolidating Ordinance, is void because the City of Atlanta was without Authority to make such contract.

It is urged that this power cannot be derived from the provision in the Constitution of Georgia, which declares that "The General Assembly shall not authorize the Construction of any street passenger-railway within the limits of any incorporated town or city, without the consent of the corporate authorities."

Civil Code Sec. 6448.

It is well said in the able brief of counsel for the railway company that "The scope of permissive terms of consent may be various and the dividing line between valid and invalid conditions may be difficult of discernment."

It is true, that the city cannot name any and all conditions. It cannot impose terms and conditions which are illegal. It cannot name terms which cut down and impair the charter powers of a street railway company. It cannot fix terms and conditions violative of the Constitutions of this State and the United States.

The City, by its terms, cannot enlarge the charter of said company. Nor can the City enlarge its own Charter powers by the terms and conditions of its consent to the construction of a street railway in its streets.

91 It is true, some authorities hold that the power to regulate rates does not appertain to the government of a city, and is not municipal in character.

Webster vs. Superior Court 67, Wash. 37
Garner vs. Mo. & K. Tel. Co. 189 No. 83
City of Woodburn vs. Public Service Com. (Or)
P. U. R. 1917 B 967, 161 Pac. 391.

But this position does not seem to be borne out by sound reasoning. The inhabitants of a city have a vital interest in the charges of a public utility serving them. If the city can regulate them in other respects, and if a street railway cannot be constructed in its streets without its consent, why cannot such city reasonably and legally impose terms fixing the rates of such utility?

Under the power to make contracts which they deem necessary for its welfare, a city can make a contract for the construction of water works.

Rome vs. Cabot, 28, Ga. 50.
Heilbarn vs. Cuthbert, 96 Ga. 312.

In modern cities transportation and charges for transportation are almost as important to the welfare of their citizens as is water.

The building of scho-l houses *are* within the scope of the general powers of a Municipal Corporation.

Cartersville vs. Baker, 73 Ga. 686.

Then, why does not the fixing of rates, which a street car c pany must charge its inhabitants, fall within the general power a city, when such city is authorized to fix the terms upon which street car company can construct its lines in the streets? But whet the city has the power to fix rates arising from its power to cons or refuse to consent to the construction of street railways in its stre or not, it seems to me that it has such power in cases where street r way companies are chartered under the general law for the incorp tion of such companies. As we have seen above, this law declares street railways, incorporated thereunder, shall be constructed wit the limits of any incorporated town or city without the consent of corporate authorities and that all such street railway companies, in porated under this law, shall be "Subject to all just and reasona rules and regulations by the corporate authorities."

Civil Code, Sec. 2600.

At the time of the passage of the Act for the incorporation street railways, the power to make rates for such companies had been delegated by the legislature to the Railroad Commission. Th was no agency outside of the legislature for the fixing of such r In each case, the incorporated towns and cities of the State would h to appeal to the legislature to fix or alter the rates of their street r way companies. So it was a most reasonable and proper thing

the legislature to do, in passing an act for the incor-a
92 of street railways, to lodge in the towns and cities of

State, the power of general regulation over such compan including the power to fix rates. Under their charters, the Atl Railway & Power Company and its predecessor took them, "Sub to all just and reasonable rules and regulations by the corpo authorities" of the towns and cities in which they operate. "All and reasonable rules and regulations" seem to me to embrace power to make contracts with such companies as to the rates wh they should charge.

But it is claimed that it has been judicially determined in the of the City of Atlanta vs. Old Colony Trust Co., 83 Fed. 39 and Fed. 859, that the City of Atlanta does not possess the power to tract with the street railway company for rates and transfers.

It is true that in this case the Circuit Court and the Circuit C of Appeals held that the City of Atlanta did not have the po so far as the Atlanta Consolidated Street Railway Company was cerned, to initiate and fix rates for such company and to require company to issue transfers.

The Atlanta Consolidated Street Railway Company was chart by the Secretary of State, prior to the adoption of the general act the incorporation of street railways by the Secretary of State, the confirmation of its charter by the legislature afterwards took p prior to the passage of the general act for the incorporation of st railways. There was nothing in the original charter of the Atl Consolidated Street Railway Company or in its confirmation by legislature which made such company subject to regulation by City of Atlanta. So whether the City of Atlanta could regulat

ures depended upon the general law of the State in existence at that ime. It is true that the Circuit Court and the Circuit Court of Ap-eals held in the case of the City of Atlanta vs. Old Colony Trust ompany, that the City of Atlanta did not derive this power from he provision of our State Constitution, which prohibits the legis-ature from authorizing the construction of any street passenger ailway within the streets of any incorporated town or city without he consent of the corporate authorities. This case is an authority o that extent only. We question its validity as to that extent, as e shall hereinafter undertake to show.

It is unquestionably true that the fixing of rates for public serv-e corporations is a legislative function of the State, and, while the ight to make inviolable contracts, which shall prevent the State uring a given period from exercising this right, has been upheld by udicial decisions, it has been quite uniformly held that the renuncia-on of a sovereign right of this character must be evidenced by lear and unequivocal terms. Such power must be expressed beyond reasonable doubt.

Milwaukee Elec. R. & L. Co. vs. Wis. Com. 238 U. S. 174.
Los Angeles Water Co. vs. Los Angeles 177 U. S. 538.
Walla Walla vs. Walla Walla Water Co. 172 U. S. 1.
New Orleans Water Wks. vs. Rivers 167 U. S. 674.
Vicksburg vs. Vicksburg Water Wks. 206 U. S. 496.
Freeport Water Co. vs. Freeport 180 U. S. 587.

It must be borne in mind that the question in this case is, not hether the State of Georgia has surrendered to the City of Atlanta he sovereign right to fix the rates of this company, so that the same an not be altered or changed, but whether the legislature of this tate has delegated to the Railroad Commission the power to fix uch rates, where the same had been previously fixed between the ty of Atlanta and the company by contract or ordinance. This istinction is of vital importance in this discussion. We repeat that he question is not, whether the State of Georgia has surrendered s power to fix these rates, but whether it has granted to the Railroad ommission of Georgia, the power to fix such rates, when the same ad been fixed by contract between the city and the company, or y municipal ordinance. We do not contend that any such surrender this governmental function has been made by the legislature to ny of the towns or cities in which this company operates.

As the state has not actually divested itself of the power to fix ese rates, an agreement, by which the city and this company fix ese rates, is made subject to the right of the state to change the me.

L. & N. R. Co. vs. Mottley 219 U. S. 467.
Union Dry Goods Co. vs. Ga. Public Service Corp. 142 Ga. 841.
Yate Man vs. Towers 126 Md. 513 P. U. R. 1915 E. 811.
Portland R. Light & P. Co. 229 U. S. 397.
Dawson vs. Dawson Tel. Co. 137 Ga. 62.

If no specific authority has been conferred on the city to en
into these contracts, the right of the state to interfere, whenever
public welfare demands such action, was not abrogated; but th
contracts remain valid between the parties to them, until such time
the state sees fit to exercise its paramount authority.

Manitowoc vs. Manitowoc & N. Traction Co. 145 Wis. 13
Denver & S. P. R. Co. vs. Englewood (Col.) P. U. R. 19
E. 134.
Benwood vs. Public Service Com. 75 W. Va. 127.

In other words, in the absence of express and unequivocal author
conferred by the legislature on a city to that effect, the legislat
power of fixing rates is not abrogated; but the legislature can at a
time fix such rates, or alter, or abolish such contract rates. But u
the state does so act, rates fixed by municipalities, granting franchi
to street railway companies, where such grants are accepted by s
companies, are binding.

Such contracts are permissive and valid, and are binding upon t
parties until such time as the state may change such rates, or
different rates. Such contracts are permissive contracts, but, ne
theless, are valid contracts until the state acts and sets th
aside.

94 Applicant admits the physical existence of a contract
tween the town of Decatur and the Applicant. A like c
tract exists between College Park and this company.

Now arises the question, whether the fixing of rates by the R
road Commission of Georgia will impair these contracts or have
effect of repealing the respective ordinances in which they are c
braced.

We will deal with the City of Atlanta first. The Consolida
Ordinance contains this provision:

"The said Consolidated Company shall for the purpose of giv
one continuous ride inside the City of Atlanta from a point on
of its lines to a point on another of its lines, which, however,
not carry the passengers on a parallel line or in the same gen
direction from which he came, grant one transfer ticket upon
payment of one full fare, provided such transfer is requested at
time of the payment of the fare."

It is true that this ordinance does not make any direct provisio
to rates. In other words, it does not name the amount which s
be paid for a fare. It provided that the company shall "G
one transfer ticket on the payment of one full fare."

It is claimed that "There was no purpose to contract as to
rates of fares," and that "What was one full fare was not the sub
of agreement."

It is further claimed that "One full fare" does not mean a
cent fare." It is pertinently asked: "If that was meant why di
the parties say so?" The same inquiry might be made in the
of any ambiguous ordinance or agreement; but the fact of fai
to be clear and explicit in the language used in any document

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t authorize a presumption for or against a given construction. The language, "One full fare" is ambiguous. In determining its eaning we must take into consideration all the surrounding cumstances. At the time the fare was five cents. While some of e companies were authorized to charge more than five cents, they d not, in fact, charge any greater rate.

Is it reasonable to suppose that the City of Atlanta granted to the n lidated Company the various important rights and franchises braced in this ordinance, and left to this company the right to arge any rate of fare it saw fit, subject only to legislative regulation? ould the city grant such valuable franchises, without attempting guard against an increase in rates?

What would a transfer ticket be worth if the company was left e to double or treble the "One full fare?"

In support of the contention that "one full fare" does not mean a e-cent fare, reference is made to the repeal of Sec. 1351 (H) of the City Code of 1899, being Sec. 5758 of the City Code of 1910 by the Consolidating Ordinance. This section was a part of an ordinance passed on August 22, 1899, and provided t "no person, firm, corporation or association hereafter obtaining thority or consent to construct or operate a line or system of street ilways in the limits of the City of Atlanta, as now or hereafter de- ed, shall be permitted to collect for fares for single passengers m one point of the line or system of such company in the City nits as aforesaid, more than for one continuous trip from 12 P. M. 5 A. M. ten cents."

It may be asked why the city should repeal this ordinance which scribed a five-cent fare from 5 A. M. to 12 P. M. practically all y, if it was not the purpose to show that the city and the company th understood that they were not contracting for a five-cent fare. The purpose of the city might have been to get rid of the ten-cent e from 12 P. M. to 5 A. M.

At the time the Consolidated Ordinance was passed, there were o other ordinances of the City of Atlanta embraced in the City Code 1899, being sections 1335 and 1336. These ordinances appear as tions 2721 and 2722 in the City Code of 1910. Section 1335 pro- les that from and after the first day of May, 1897, it shall be un- wful for any company operating electric or other railways upon streets of Atlanta to charge more than five cents for the transpor- ion of any person from any point on said line or lines to any other int or points on any line or lines operated by said company, ether the same be for continuous passage on through lines, or by nsfer to any other line or lines.

The ordinance, from which sections 1335 and 1336 of the Civil de of 1899 were codified, was enacted in 1897. If it were the pur- e of the City not to contract for a five-cent fare, why was it that s section of the City Code was not repealed? It was left on the tute book of the city. By the repeal of 1351 (H) of the Civil Code 1899 the city got rid of the ten-cent fare from 12 P. M. to 5 A. M. the retention of section 1335 of this code the city retained, or at- pted to retain, the five-cent fare with transfers during all hours

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of the day. Furthermore, section 1336 uses the language, "U
the payment of one full fare, as above provided, it shall be the
of the said railway company to transport such passenger to his d
nation upon any line or lines of said company, and to furni
transfer ticket without additional charge, whenever it is necessary
said passenger to change to the car of any line or lines operated
said company, in order to reach his said destination."

These two sections furnish a definition of the language, "
full fare" used in the Consolidating Ordinance, and make the
mean a five-cent fare.

But whether or not this construction of "One full fare" is co
or not, it is immaterial to the proper conclusion to be reached in
matter.

The street railway company asks for a six-cent fare within
city limits of Atlanta and two additional cents for each t
96 fer. So clearly, if the Commission grants the applicatio
the street railway company, its action will impair this
tract between the city and the street railway company, and
pro tanto repeal the Consolidating Ordinance under which the s
railway company is now operating.

There is no question that if the application of the street rail
company is granted by the Commission, this action will amount t
impairment of the contract between the cities of Decatur, Col
Park and Edgewood on the one part and the street railway comp
on the other part.

Where the company accepted and acted upon a franchise t
its maximum fare, the Railroad Commission of Vermont has
jurisdiction under the act of that State giving the Commission j
diction over the matter of tolls and rates, except where governe
special provisions of law.

Barre vs. Barre and M. Traction & Power Co. 92 A. 237

So, in my opinion, the Railroad Commission of Georgia is wit
jurisdiction to fix the rates within the City of Atlanta, and the
from and to the other cities above mentioned, so as to alter or ch
the rates prescribed in the contracts between the company and t
cities. The only tribunal, which can change these rates, is the
islature of Georgia, the latter having excepted from the gran
power to this Commission the right to impair these contract rat
to repeal ordinances under which they were fixed.

The Commission has jurisdiction over the matter of transfers
side of the City of Atlanta, except where this matter is specially
trolled by the contracts between the company and the other
above referred to. The Commission can provide fares higher
five cents on the Decatur line between the hours of 12 o'clock
night and 5 o'clock A. M. The Commission has power to regu
the matter of transfers on the line from College Park to Atl
The College Park contract only provides that there shall be no gr
fare than five cents for each passenger from the southern limi
College Park to some central point in the City of Atlanta. Th
fore, the Commission can provide extra compensation for tran
to and from College Park.

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Clearly, the Commission has power and jurisdiction to fix fares for ansportation of passengers in the territory lying outside of the City f Atlanta in those cases where these fares are not controlled by said ontracts hereinbefore referred to.

There is no question over the power of the Commission to fix gas, lectric light, heat and power rates.

It seems to me that the Commission, which has no judicial funcons, should go slowly in declaring contracts and municipal ordiances null and void; and that in all cases the doubt should be reolved in favor of the validity of such contracts and ordinances.

The conclusions herein reached are not free from doubt, but represent the best opinion which I have been able to form after careful study of the able briefs of counsel for the apicant, and from an investigation of the authorities at my command.

(Signed) JAMES K. HINES,
Special Attorney.

EXHIBIT 6.

Before the Railroad Commission of Georgia.

File No. 13946.

re Application of GEORGIA RAILWAY AND POWER COMPANY for Increases in Electric Light and Power Rates, Gas Rates, and Street Car Fares.

Opinion and Order of the Railroad Commission.

Decided September 22nd, 1920.

Chas. Murphey Candler, Chairman,
Paul B. Trammell, Vice-Chairman,
James A. Perry,
John T. Boifeuillet,
J. D. Price,
Commissioners.

Albert Collier, Secretary.
E. M. Price, Rate Expert.
James K. Hines, Special Attorney.

Railroad Commission of Georgia, Atlanta.

File No. 13946.

re Application of GEORGIA RAILWAY AND POWER COMPANY for Increases in Electric Light and Power Rates, Gas Rates, and Street Car Fares.

y the COMMISSION: September 22nd, 1920.

In connection with the order this day issued in the above stated plication, it appears proper to submit a brief statement as to the

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more important principles and some of the material facts underly
the action of the Commission. No public service Commissioner fi
any degree of enjoyment in any official act which results in plac
additional burdens on the public. The utmost satisfaction that
come to him is such as arises out of the consciousness of duty p
formed.

The principles governing rate making by a regulatory Comm
sion are simple. The public must not be overcharged. The util
is entitled to such rates as, with capable management, will afford
a reasonable return upon the fair value of its property used in
public service.

It has been truly said, "the Rate Commission in maintainin
delicate and even balance between these two poles of essential ri
has a great responsibility and a most difficult undertaking.
range of inquiry between excessive charge on the one side and a
return on the other, is a 'no-man's land,' and whosoever ventu
there to adjust these delicate balances, whether Court or Commissi
frequently returns bearing the scars of criticism; seldom the m
of praise."

This Commission is bound by law. Its duty, in a rate case
plainly defined in the law. The highest Courts of the country h
construed the law and these deliverances must be observed and
lowed by Commissions. The Act of the General Assembly
Georgia, creating this Commission, requires it to make "just
reasonable rates."

The courts of the land, with one voice, have declared that a "
and reasonable" rate is one that affords the utility, with compe
management, a fair return upon the fair value of that which it
ploys in the public service and does not exact from the public m
than the service is worth.

In Smythe vs. Ames, 169 U. S., the Supreme Court of the Un
States said, "we hold, however, that the basis of all calculation
to the reasonableness of rates, must be the fair value of the prop
being used for the convenience of the public. And in order to
certain that value, the original cost of construction, the amount
pended in permanent improvements, the amount and market v
of its bonds and stock, the present as compared with
101 original cost of construction, the probable earning capa
of the property under particular rates prescribed by stat
and the sum required to meet operating expenses, are all mat
for consideration, and are to be given such weight as may be
and right in each case. We do not say that there may not be o
matters to be regarded in estimating the value of the prope
What the Company is entitled to ask is a fair return upon the v
of that which it employs for the public convenience. On the o
hand, what the public is entitled to demand is that no more be
acted from it for the use of a public highway than the services
dered by it are reasonably worth."

In Wilcox vs. Consolidated Gas Co., 212 U. S., the same C
held that the value of the property is to be determined as of
time when the rate inquiry is being made—that is to say, it is
present value of applicant's property which must be ascertai

This does not mean, however, that present value is measured alone by reproduction cost as found by the use of present unit costs.

There seems to be prevalent in this community where this application and that of 1918, have been much discussed, the view that capitalization is the controlling factor and that the effort of applicant is to secure such rates as will give it a return upon its capitalization which, it is alleged, is excessive. This Commission did not in 1918 nor will it now consider capitalization as the basis of the rates heretofore prescribed or now to be prescribed. Fair value of the property in use or useful, is the only basis, it ever has used in any rate case.

Following the ruling in Smythe vs. Ames, quoted above, it has only given consideration to the market value of capitalization, as merely one index as to the fair value of the property in use. The weight heretofore given this factor in the problem was almost nil, and the weight to be given it now, under existing financial conditions, is even less than in 1918.

In arriving at an estimate of the value of the property, owned and leased, and devoted to the public use in 1918, by the applicant, every factor in the problem enumerated in Smythe vs. Ames, except that of Reproduction cost, was used by this Commission.

It was not practicable at that time to have an appraisal of all the properties in use, altho the Commission did have access to an inventory and appraisal of the leased properties of the applicant, made in 1912 by an Engineer of character and under circumstances which seemed to give it value. The Commission had in its records full and complete data as to the extent, character and acquisition and construction costs of the owned properties of the applicant.

There has not been even an effort in the instant application to prove that the minimum fair value given to the owned and leased properties by this Commission in 1918, was an over-valuation.

The Commission is today more than satisfied that it was not.

102 The applicant in the present case has submitted engineering estimates of reproduction of cost, new, of the properties in use at this time. Accrued depreciation was not estimated. The total of these estimates is far in excess of the values estimated by the Commission in 1918.

The Commission is satisfied that it would be unfair to the public to prescribe rates, exclusively, upon a basis of value determined by the cost of reproduction new at a time when such cost is abnormally inflated. Consideration of reproduction cost, it is true, should be had, just as should the original cost of acquisition and construction.

The weight of authority is that every element having any bearing on the situation must be considered in the inquiry and then sound business judgment applied in the determination of a valuation that is fair and just to the public and the utility. This valuation must not, it is universally held, be confined to the naked physical or "barebones" properties. The valuation of the properties of a concern organized, established, with unification and adjustment of all the parts and the whole and actually serving an established constit-

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uency, which ignores these facts, is an incomplete valuation and does not meet the declaration of the Supreme Court that "what the Company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

We are not suggesting here a separate valuation of what is commonly called "going concern" value, as a distinctive item, or that other thing called "good will" which may go with properties devoted to certain uses, but solely that added value in the physical properties themselves attaching because of their assembly, unification, adaptation and utilization in the purposes for which, as a whole, they were designed. In the proper functioning and operation of these physical properties, there is need of a cash working fund, with which, pending the collection of its revenues, necessary supplies may be purchased and kept in stock for use as needed, and out of which payrolls may be met.

Courts and Commissions universally recognize this necessity and likewise the fact that capital so used is entitled to its return. The sum of working capital needed is largely to be estimated by the character of business and its extent.

In order to avoid interruptions in its service, and inconvenience to the public, a public utility must keep on hand adequate supplies, materials, replacement parts, etc., and cash to meet its payrolls on the hour.

In 1918 the Commission estimated the fair value of the properties owned, leased and operated by applicant, exclusive of the properties of the Atlanta Gas Light Company and the Atlanta & Northern Railroad, at $35,000,000.00 and necessary working capital at $666,000.00, making a total of $35,666,000.00 upon which the Company was entitled in law to a reasonable return.

There was included in the valuation of physical properties the sum of $311,564.00 for the Tugaloo lands and partial development not then, nor as yet, in use.

103 The Commission is now of the opinion, upon further consideration, that as this property was not in actual use at that time, its inclusion in the valuation, was erroneous. Deducting this sum therefore from the minimum fair value of $35,000,000.00 then placed upon the combined owned and leased properties in use on December 31st, 1917, and excluding from consideration the sum of $526,092.00 expended on the Tugaloo investment since December 31st, 1917; adding capital additions to the combined properties since December 31st, 1917, to April 30th, 1920, now in use, aggregating $4,337,815.00; giving consideration in connection with actual acquisition and construction costs to reproduction cost, depreciation accrued since December 31st, 1917 and of added values in the physical properties because of assembly, adaptation, unification and organization as a whole and now in full use, and further including the sum of $850,000.00 as necessary working capital, the Commission is of the opinion that the fair value of the combined properties owned, leased and devoted to the public use, on April 30th, 1920, upon which applicant is entitled to a reasonable return is $41,000,000.00.

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Estimating the fair value of the properties in use, including working capital, at $41,000,000.00 the Commission has made thorough analyses of the Company's operations, with the purpose of ascertaining its earnings. These analyses have been made as to operations for the year ended December 31st, 1919, and for six months ended June 30th, 1920. They have been made of the Company as a whole and then by departments, and with and without inter-departmental charges.

Fixed charges such as interest on bonds, rentals paid for leased properties, such as to the Georgia Railway & Electric Company, have been entirely ignored in arriving at net income as produced by the properties. From the total of operating and non-operating revenues received from the properties valued, the only deductions made were operating expenses, taxes and a sum for annual depreciation estimated at an average of two and one-half per cent on the value of physical properties only.

These studies show for the year 1919 a net income of approximately 6.20 per cent, and for six months ended June 30th, 1920, of approximately 6½ per cent on the valuation (including working capital), of $41,000,000.00, available for interest, rentals, contingencies and return on the properties used in the public service. The Departmental studies show the smallest per centum of returns in the Railway Department and the outside Electric Department.

Depreciation.

The Commission, as in 1918, notwithstanding increased prices, has allowed a charge against gross revenues, at the average rate of 2½ per cent on physical property values, to cover annual depreciation and obsolescence.

The justice of an allowance for depreciation is questioned by no competent authority of which this Commission has knowledge. The principle has been well stated as follows:

104 "Moreover in determining what is a fair return to the Company, there can be no doubt as to the justice of some allowance for depreciation. A public service corporation is under no obligation to sacrifice its property for the public good. Nor is it bound to see its property gradually wasted by wear and decay without making provision for its replacement. It is entitled to earn not only enough to meet the expense of current repairs, but also to provide means for replacing the parts of the plant when these can no longer be used."

In Hammond Lumber Co. vs. Public Service Commission, 189, Pac. Rep. 639, the Supreme Court of Oregon, very recently said:

"For the defendant, it is maintained that the Company, as time goes on, is entitled to charge such a rate as will not only afford a fair return of interest on the value of the plant, but will provide for and absorb the depreciation of the property under all the circumstances of the particular case. The carrier devotes its private property to

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public service, but it is none the less on that account within the protection of the constitution that such property shall not be taken for public use, nor the particular services of any man demanded, without just compensation. * * * Thus to devote its property means that it gives to the public the right or option to demand its service or the use of its property, but this is always subject to the condition of just compensation. Neither the public, nor any of its component parts, is compelled to exercise this right or option, but, if it is exercised, it can only be under the attendant constitutional condition.

It is said that a shipper should not be compelled to buy the Company's railroad. But it is equally true in principle that the Company is entitled to such rates as will fairly compensate it for the services rendered and for depreciation of its plant employed in such service, even though it reaches the vanishing point. In other words, the Company ought to be allowed to come out even, in an undertaking which may reasonably be expected to exhaust itself, and besides quitting whole, to receive a fair compensation for its services. The carrier ought not to be compelled to sacrifice its plant and be content merely with compensation amounting only to interest on its value. To ignore this principle would be to violate the constitutional inhibition already quoted. A public service corporation cannot be expected to sacrifice its property for the public good. Nor is it bound to see its property gradually wasted by wear and decay without making provision for its replacement. It is entitled to earn enough not only to meet the expenses of current repairs, but also to provide means for replacing the parts of the plant when these can be no longer used."

The soundness of these principles cannot be denied. It seems a waste of time to restate them, but for the fact that there apparently exists in the public mind a disposition to question their application in the instant case. The Commission is fully satisfied that in using an average rate of 2½ per cent, its allowance is not excessive.

105 On page 15 of the joint brief filed by counsel for protestants, the following comment is made upon the Commission's allowance in 1918 of this average percentage: "The Commission allowed for actual depreciation and obsolescence 2½ per cent on the total value of the physical properties. This included land, water, concrete dams, engineering, contractors' profits, law, organization and general expenses, and interest during construction." * * *

Whether intended or not this comment is entirely misleading. This Commission has not made an annual allowance, for example on water. The Commission was treating the properties as a whole. Different parts or units undergo depreciation or become obsolescent in different degrees and percentages. One item may undergo depreciation annually at the rate of 10 per cent, another 20 per cent, another not at all. The Commission stated in its 1918 report that it had reached the conclusion that a rate of 2½ per cent on the whole was not too high after investigation as to the average life of the more important items constituting the properties, and from exam-

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nation of numerous estimates by other State Commissions on similar properties. Had the Commission published its itemized estimates counsel would have seen in black and white that neither water, nor the other things mentioned except as reflected in the value added to perishable physical properties, were depreciated. This statement ought not to have been made necessary.

"Abnormal Conditions"—"Temporary Rates"—"A Second Emergency Application," etc.

Counsel for the City of Atlanta and other protestants apparently attach great importance to the fact that in the opinion of the Commission granting increases in rates to applicant in 1918, it was stated that these increases were deemed necessary because of abnormal conditions bringing about increased operating costs—that the rates then prescribed were not to be taken as permanent, and that "when normal conditions shall have been restored or whenever in the opinion of the Commission desirable, a more exhaustive and detailed inquiry into the property values and the operating results of the Company will be made and such further revision in rates as seems reasonable and just will follow."

The Commission sees absolutely nothing in any of the quotations made from its opinion, preventing at this time, another revision of applicant's rates, should today's conditions demand.

In fact, should such be shown, it is the duty of the Commission to hear and act upon this application. The law (Code Section 2631) provides "said Commissioners shall, from time to time and as often as the circumstances may require, change and revise such schedules."

In the City of Atlanta vs. Atlanta Gas Light Company, 100 S. E. Rep. 442, the Supreme Court of Georgia, said, "Another con-
106 tention was that the order was void on the ground that it was adopted because 'of an emergency arising out of national conditions existing at this time.' It was shown on the trial that on account of the advance in material, wages, the cost of operation, additions, etc., the expense of the corporation had enormously increased on account of war conditions, and that its net income had correspondingly decreased, etc. It was to meet just such conditions, no doubt, that the Legislature provided in the Act of 1879, supra, that the Commissions shall, from time to time and as often as circumstances may require, change and revise such schedules of rates. When circumstances are such that the price of everything else has increased, it may well be that the Commission may see the necessity, under the mandate of the law, of increasing the price of gas to the consumers as being required by the circumstances."

The Georgia Law in this respect is not peculiar to this State.

The Supreme Court of Oregon in Hammond Lumber Co., supra, declared that "the establishment of a given rate sheet is not absolutely final and conclusive for all time, for new conditions may arise tomorrow which will make unreasonable, one way or the other, a rate which today is just and fair, the whole matter is continually under the scrutiny of the Commission, in the exercise of a flexible administrative authority, and can be re-opened at any time, either

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of its own motion or on the petition of interested parties."

The record in this application is redundant with evidence th abnormal prices and conditions still exist, vitally affecting the c erating costs of applicant.

The Commission has caused to be compiled a table of comparati actual cost to the applicant of several important materials, suppl and equipment used by it, as at three different periods, to-wit, (to the United States) before, during and after the war. The Ju 1918 costs affected the Commission's 1918 action, just as it mu now take cognizance of prevailing 1920 costs:

Company Unit Costs.

Commodities and Materials f. o. b. Atlanta.

	July 1st,		
	1915.	1918.	1920.
Coal, per ton	$2.56	$5.01	$11.80
Gas Oil, per gal	.046	.091	.14
Copper, per lb	.23½	.27½	.24
Steel Wire, per lb	.024	.037	.03
Standard Poles, each, set.	10.50	14.00	20.00
Cross Arms and Brackets.	.58	.94	1.67
Y. P. Lumber, per 1,000 ft.	16.00	34.00	55.00
Insulators	.95	2.24	2.80
Creosoted Ties, each	.69	1.07	2.02
Cement, per bbl	1.25	2.18	4.50
Steel Rail, standard wt., per ton	31.43	74.00	70.00
107			
Steel Rails, Girder, per ton	42.60	none bought	76.40
Spikes, per keg	4.00	7.80	12.00
Ballast, Crushed Stone	1.00	1.80	3.13
Paving Brick	22.00	none bought	42.00
1 Standard Suburban Car —Complete	5,200.00	7,176.00	13,559.00
1 Standard P. A. Y. E. Car—Complete	4,201.00	5,819.00	11,937.00
1 Standard Trailer Car— Complete	2,120.00	2,995.00	6,063.00
1 Spl. Work 2 Piece Crossing	1,496.00	2,540.00	2,540.00

We have also had compiled a comparative table of wages paid the same periods to designated employees, as follows:

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			Wage scales in effect July 1st.					
			1915.		1918.		1920.	
Inspectors, per month			$95.00		$125.00		$172.50 to $185.00	
Motormen, per hour,	1st 3 mos		.17	1st yr.	.25		1st 3 mos.	.42
and	2nd 3 mos		.18	2nd "	.27		next 9 mos.	.44
Conductors, " "	2nd 6 mos		.19	3rd "	.29		thereafter	.46
	2nd year		.21	4th "	.30			
	3rd year		.23	5th "	.31			
	4th year		.24	6th "	.32			
	5th year		.25					
Linemen, per hour	$.30	$.31	$.36½	$.31	.40		.57	.63¼
Common Labor, per hour	...	...	...	.20	.21½		...	.35
Machinists, " "	.39	.44	...	.50			.83	.85
Carpenters, " "	.27	.32	.42	.45			.70	.80
Painters, " "	.18	.39	.25	.48			.63	.80
Car Cleaners, " "	...	...	...	.20			...	.35
Gas Stokers, " "	.15	...	...	.25			...	.43½

In addition to the above specific increases there has also been a reduction in the working hours, with penalty rates for over time and holidays, which add substantially to wage costs.

It has been shown that the paving costs paid to the City of Atlanta were in 1915, $15,733; in 1918, $45,163, and for the first 6 months of 1920, $62,545. These figures do not cover any cost to the Company of reconstruction of roadbed and track, necessitated by new pavements.

The record in this case conclusively shows that the several services rendered by applicant cost more than they did in 1918, and that under the rates then prescribed by this Commission it is earning at this time a return of approximately 6¼ to 6½ per cent on the fair value of the property used by it in the public service, excluding the Gas properties.

What is a Proper Return?

It becomes necessary therefore to inquire as to what return, is at this time, fair and reasonable.

108 The record shows that there is a large demand on applicant for services, especially for current for industrial power, which it cannot meet, without further development of unused water power and that large sums of new capital are necessary for such additional developments. Because of financial conditions now existing, it shows that it has been unable to secure needed capital from the sale of its bonds, or from short term loans except at very high rates of interest and only in limited amounts. New capital cannot be obtained by public utilities at all, except where rates are such as will afford reasonable assurance, with efficient management, of earnings sufficient to care for legitimate fixed charges and establish for them a basis of credit. This does not mean that rates should be such as in themselves will supply new capital, but that they be such as to justify capital investments in competition with other business ventures.

A public utility with rates providing only five or six per cent return cannot secure new capital in competition with a private business earning an eight or ten per cent return. It should be further borne in mind that because of the decreased purchasing power of the dollar a return of eight per cent now is not the equivalent of a six per cent return prior to the war.

In a discussion of the identical question here considered the Supreme Court of the United States in Lincoln Gas Co. vs. City of Lincoln, 250 U. S., page 256, said:

"We cannot approve the finding that no rate yielding as much as 6 per cent upon the invested capital could be regarded as confiscatory, in view of the undisputed evidence, accepted by the master that eight per cent was the lowest rate sought and generally obtained as a return upon capital invested in banking, merchandising and other business in the vicinity; seven per cent being the legal rate of interest in Nebraska." * * *

"It is a matter of common knowledge that, owing principally to the world war, the costs of labor and supplies of every kind have

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greatly advanced since the (rate) ordinance was adopted, and largely since this cause was last heard in the Court below, and it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future."

The Supreme Court of California in the San Diego Water Co. Case, 118 Calif., Page 588, discussing the question of what constituted a proper return, said:

"In fixing water rates, it is the duty of the City Council to provide for a just and reasonable compensation to the Water Company. Anything short of that is simple confiscation, and is not only a violation of constitutional rights but is an extremely shortsighted policy. Rates ought to be adjusted to the value of the service rendered, and this means that the water companies should be allowed to collect annually a gross income sufficient to pay current expenses,
109 maintain the necessary plant in a state of efficiency and declare a dividend to stockholders equal to at least the lowest current rates of interest, not on the par or market value of the stock, but on the actual value of the property necessarily used in providing and distributing the water to consumers."

This Commission is of the opinion, after mature consideration, that a return on the fair value of the property and capital employed by applicant of eight per cent is reasonable and really needed to enable it to render to the public, under existing conditions, efficient and adequate service, and the schedule of rates established in connection herewith is intended to provide approximately this return. Out of this percentage of net income applicant must meet its fixed charges, such as bond interest, sinking fund requirements, rentals for leased properties, etc.

Comparison with Central Georgia Power Co. Rates.

In the joint brief of counsel for protestants, pages 36-37, reference is made to rates prescribed for the Central Georgia Power Co. and the following quotation is made from the opinion of the Commission in the 1918 application of the Georgia Railway & Power Company:

"Comparisons of electric rates prevalent in different cities are frequently misleading, and sometimes difficult because of the varying methods of stating them. Conditions prevailing in different cities are so distinctive as to seriously affect the value of such comparisons. The character and nearness of fuel supplies; the source of generating power, whether steam or water or both combined; the distance of the generating plant from the distributing market, and other local conditions, all affect the value of comparisons of prevailing rates."

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The correctness of these statements is emphasized by the very fact that counsel have undertaken to compare the rates of these two companies without consideration or knowledge of differentiating facts or conditions, as for example distances between generating plants and consuming centers; the character and expense of construction; the fact that the Central Georgia Power Co. has no steam auxiliary, that it does no retail or distributing business, etc. The quotation by counsel from an opinion of the Commission published in its 41st Report does not relate to rates of the Central Georgia Power Co. at all, but relates solely to the retail rates of the Macon Railway & Light Company, which purchases current from the Central Georgia Power Company and distributes to the public.

It is proper to remark that the schedule of rates recently prescribed by the Commission for the Central Georgia Power Co. was likewise intended, and it is believed will, give to it a return of approximately eight per cent on the fair value of the property and capital employed by it in the public service.

110 Street Car Fares.

Prior to April 14th, 1919, applicant had in effect on its City and suburban lines, five cent fares with free transfers.

Effective August 14th, 1919, a maximum fare of six cents was authorized where a five cent fare was then charged, except as to fares between Atlanta and Decatur on the Main Decatur line and between Atlanta and College Park on the College Park line, fixed by contracts between the Company and the towns of Decatur and College Park, held by the Supreme Court of Georgia to be valid.

Patrons on these two lines intermediate between Atlanta, and Decatur and College Park pay six cent fares.

The interurban line to Stone Mountain was not included in the petition for increased fares and hence its zone fares were not increased in 1919.

Applicant now asks for an eight cent fare where a six cent fare is now charged and also for eight cent zone fares on the Stone Mountain line. The Commission is of the opinion now, and has repeatedly held in the past that losses, if any, or inadequate returns if such, in one department of a public utility, as a street railway should not be saddled upon the patrons of another department, as electric light or gas. For this reason an earnest effort has been made to ascertain the fair value of the property used by applicant in its Railway Department and the financial results of its operation.

This effort involved the task of proper allocations of properties used in common and a fair departmental distribution of common expenses. Absolute accuracy in this endeavor is not perhaps possible but we are satisfied that the estimates made are approximately correct, and fairly justify our conclusion that the railway properties within the 7 mile zone, under existing rates, are not earning a return in excess of 5.67 per cent per annum.

The Gainesville system and the Stone Mountain line, show very inadequate returns. Atlanta and its suburbs owe much of their growth to street car facilities and service, and if the system is to

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continue as a factor in the growth and development of this community and meet newly arising demands for expansion, improved facilities and better service, it must be allowed rates which will meet the legitimate cost of operations and provide such fair return as will encourage the investment of new capital in the enterprise. Comparatively few public utilities are at this time able to attract new capital. In their nature they are not liquid enterprises and once capital is invested in them it becomes fixed and not subject to easy withdrawal. They cannot move their business; they must be operated. It is not easy to reconcile the public to necessary rate increases, and such cannot be made without the consent of regulatory bodies, as is the case with private industries or enterprises. No public utility can long successfully operate and serve in a hostile community, nor can a community trample its utilities under foot or ignore and deny they reasonable and just demands, and at the
111 same time expand and develop to the extent to which it is entitled. The Company can doubtless survive and continue to function to a certain degree upon its present revenues, but it cannot, in our opinion, measure up to the highest standard of adequacy and efficiency in service and also meet promptly, reasonable demands for expansion and extensions required by the public interests, unless it is allowed something more than "bare existence rates." The position of applicant is not peculiar to it. The local situation is no different or different only in degree, from that found to exist throughout the entire country. The Federal Electric Railways Commission, appointed by the President to study the condition and needs of the Electric Railway Industry in the United States has just submitted its report, from which we quote briefly, as follows:

"The investigation (made by it) demonstrates that the financial condition of the electric railway industry is acute, and that to a very great extent it is not properly performing its public functions. The record in this case shows that on May 31st, 1919, there were 62 companies, having a mileage of 5,912, in receivership; that 60 companies had dismantled and junked altogether 534 miles of railway and that 38 companies together had abandoned 257 miles of track. Since that date and up to July 1st, 1920, there have been 56 additional companies, having a mileage of 1,908, which have been thrown into receivership. * * * As a whole there has been some improvement in the industry since the commencement of these hearings, due to the fact that there has been an increase in the car riding habit since demobilization, and in a great many instances the fare has been increased beyond 5 cents. In spite of this slight improvement, however, the condition of the industry at the present time is serious."

This Commission then sets out a number of causes which it concluded had contributed to the bringing about the serious condition mentioned, among others inadequate fares, and summarizes fare increases to July 1st, 1920, as follows:

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"Increased fares have been allowed in over 500 selected cities; 10 cent fares have been allowed in 69; 9 cent fares in two cities; 8 cent fares in 30 cities; 7 cents with 1 cent charge for transfers in 26 cities; 7 cents in 145 cities, 6 cent zones with 2 cent transfer charge in 10 cities; 6 cents for two zones, with 2 cents per zone thereafter in 13 cities; 6 cents for each two zones in 4 cities; 6 cents cash fare in some cases in 149 cities; 5 cent zones and elimination of reduced rate tickets in 50 cities.

Boston has a 10 cent fare, Chicago, Washington, Cincinnati, Kansas City, Youngstown and other large cities are on an 8 cent basis."

The Commission then adds,

"It would seem that so long as the railways depend upon earning power, and earning power depends upon passenger revenue, the fixed uniform fare is a broken reed for the industry or for the community to lean upon. Perhaps the general sentiment of the electric railways is best expressed by the evidence of Gen. Guy Tripp before this Commission, as follows, 'We were all living in a fool's paradise in the street railway business when we suddenly woke up, when the war woke us up, to find that no business which
112 cannot increase its revenues under any conditions can live or is sound.' Conversely, it may be said that no community should bind itself by contract or otherwise to continue after normal conditions have been restored a rate which might be found reasonable during this abnormal period."

The five cent fares now in effect on the main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the Company on other routes, and on intermediate territory on these routes, are discriminatory. This commission is without power to increase them.

It will be noted however, that in the order authorizing the Company to charge seven cents on its City and suburban lines, where zone charges are not in effect, increased facilities are required on the main Decatur and College Park routes, which will result in improved service.

An eight cent fare on the Gainesville system of the Company is authorized. This fare will not in the opinion of the Commission afford a fairly compensatory return, but is all that the traffic will bear.

The earnings on the Stone Mountain line do not afford a fair return, altho better than on the Gainesville System. There are five zones on this line with five cent fares for each zone, except on the Atlanta-Decatur zone on which it is ten cents. Commutation tickets are sold on this line. The order of the Commission allows a seven cent fare on zones where five cents is now charged, making the total fare between Atlanta and Stone Mountain thirty cents instead of twenty-five cents as now. The fare on the Atlanta-Decatur five cent zone is to remain as now.

The price for which commutation tickets are now sold may be increased twenty per cent.

On the Buckhead-Camp Gordon route there are three zones, with a six cent fare for each zone. The zones as now established are, from Atlanta to Buckhead 6.38 miles; Buckhead to Oglethorpe University 3.76 miles; Oglethorpe University to Camp Gordon 1.40 miles.

The fare on the Atlanta-Buckhead zone is increased to seven (7) cents; the other two zones shall remain as now, six cents each. The total fare to Camp Gordon to be nineteen cents. Two fares of six cents each are now charged on the River Line for a continuous passage to the end of the line, the second fare being for the short distance beyond Fisher's Avenue. The Commission does not think the total fare to the end of this line should exceed the total now in effect, and therefore orders that the fare between the City terminus and Fisher's Avenue shall be seven cents, and from Fisher's Avenue to the end of the line five cents additional, making the total for the line between terminii, twelve cents as now.

The Company is required to sell from its office and thru conductors, books of fifteen tickets, or fifteen tokens, each good for one passage, for the sum of One oDllar ($1.00).

passage, for the sum of One Dollar ($1.00).

113 On the Gainesville System thirteen tickets shall be sold for One Dollar ($1.00).

During rush hours there is excessive congestion on the City lines and the Commission is convinced that additional seating capacity, on practically all routes, should be provided as soon as practicable.

The order of the Commission authorizing increased fares contains a provision directing applicant to provide during rush hours as now established, within six months from this date, twenty per cent additional seating capacity, except as to the main Decatur and College Park routes, on which trailers shall be used on all schedules operated during rush hours, and also excepting Buckhead and Camp Gordon route.

Light and Power Rates.

A careful study and analysis of the earnings of the Company for 1919 and for six months of 1920 have satisfied the Commission that the Electric business of the Company inside the seven mile zone earns a larger percentage of return than that of the outside zone, and that the need of additional revenue in the Electric Department should be mainly supplied by retail and wholesale power rates, the latter being relatively low. The customer using electric current for residential lighting purposes incurs an actual expense and bears a direct burden. The user of current for commercial lighting or for industrial power passes the cost on to the purchaser or consumer of his products, and only temporarily bears any part of the expense or burden. Distributed among all his customers it is not individually or appreciably burdensome.

Being satisfied that the power rates of the Company are relatively low and not contributing their fair proportion toward reasonable

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earnings, larger increases have been made in them than in lighti rates. The petition of the Company for authority to compute service charge at $1.38 per K. V. A. instead of $1.11 per K. W. maximum demand per month, is denied. During the hearing this application the attention of President Arkwright was special directed to complaints with reference to unsatisfactory service Winder and vicinity over the Gainesville-Winder transmission lin It was admitted that the service was inferior and that permanent a substantial improvement could only be had by rebuilding this line.

The Company will therefore be directed to rebuild this line with four months from October 1st next and to report to the Commissi within thirty days what steps have been taken to carry out the orde

Gas Rates.

The Commission has considered and treated the gas properties a business of applicant separately and apart from its other departmen Because of the prevailing high prices of coal and fuel oil, operati costs have been and are abnormally high.

114 For the year ending December 31st, 1919, the earnings the Gas Department showed a deficit of approximately $12 000.00 under an eight per cent return on the fair value of the pr erty in use plus working capital. The 1920 business has shown actual loss, which if continued through the entire year, the Commi sion estimates would total over $100,000.00 or over $400,000.00 u der an eight per cent return.

Should present coal and fuel oil prices continue, with the rece increases in freight rates applying on coal and oil, the Commission satisfied that the new schedule of rates herewith prescribed, will earn in excess of an eight per cent return. The Company admits t immediate need of improvements and enlargements in its plant meet the demands for increased, and in some sections improved se ice. President Arkwright in his testimony (pages 179 et seq. of t Record) enumerated several improvements urgently necessary at t time that adequate and efficient s-rvice might be rendered. He al stated that needed apparatus and mains should be provided in or that better and more uniform pressure might be had in the West E Section, Ansley Park, and the Virginia-Highland Ave. Section.

The accompany order of the Commission will require these i provements made as early as practicable.

In Conclusion.

The increased rates and fares provided in this order are, in opinion of the Commission, made necessary by existing conditions They will be revised whenever changed conditions seem to requ

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15 Railroad Commission of Georgia, Atlanta.

File No. 13946.

In re Application of the Georgia Railway and Power Company for Increase in Charges to the Public for the Various Classes of Service Furnished.

September 22nd, 1920.

Upon consideration of the record in the above entitled case and of the facts and arguments submitted at the hearing had thereon, and of the report and opinion this date adopted by the Commission containing its findings of facts and conclusions therein with respect to the issues involved, which said report is hereby referred to and made part thereof, it is

Ordered: That on and after October 1st, 1920, and until the further order of this Commission, the following schedule of rates shall be the maximum schedules of rates to be charged by the Georgia Railway & Power Company, for the classes of services indicated:

SCHEDULE A.

Atlanta, Ga., Residence Lighting Scale.

(Within City Limits, Monthly Basis.)

For the first 100 K. W. H. per month.....9c. per K. W. H.
For the next 100 K. W. H. per month.....8c. per K. W. H.
For the next 100 K. W. H. per month.....7c. per K. W. H.
For the next 200 K. W. H. per month.....6c. per K. W. H.
For all over 500 K. W. H. per month.....5c. per K. W. H.

Minimum monthly charge, $1.11.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE B.

Atlanta, Ga., Commercial Lighting Scale.

(Within City Limits, Monthly Basis.)

For the first 100 K. W. H. per month.....9c. per K. W. H.
For the next 100 K. W. H. per month.....8c. per K. W. H.
For the next 100 K. W. H. per month.....7c. per K. W. H.
For the next 200 K. W. H. per month.....6c. per K. W. H.
For the next 500 K. W. H. per month.....5c. per K. W. H.
For all over 1,000 K. W. H. per month.....4c. per K. W. H.

Minimum monthly charge, $1.11.

Discount: Bills based upon the foregoing rates are subje
116 to a discount of ten (10%) per cent of the total thereof, wh
paid on or before the 10th day of the month.
Contract Period, 1 year.

SCHEDULE C.

Residence and Commercial Lighting Scale, Monthly Basis.

Suburban Districts, not Incorporated, Adjacent to the City of Atlan
Ga.

(Within ½ Mile of Atlanta City Limits.)

For the first 100 K. W. H. per month.....10c. per K. W.
For the next 100 K. W. H. per month..... 9c. per K. W.
For the next 100 K. W. H. per month..... 8c. per K. W.
For the next 200 K. W. H. per month..... 7c. per K. W.
For all over 500 K. W. H. per month..... 6c. per K. W.

Minimum monthly charge, $1.66.

Discount: Bills based upon the foregoing rates are subject to a d
count of ten (10%) per cent of the total thereof, when paid on
before the 10th day of the month.

Contract Period, 1 year.

Beyond the ½ mile radius of Atlanta City Limits: 1c. per K.
H. higher than the Half Mile scale for the same class of service.

Monthly minimum charge, $2.22.

Discount: Bills based upon the foregoing rates are subject to a d
count of ten (10%) per cent of the total thereof, when paid on
before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE D.

Residence and Commercial Lighting Scale, Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton,

For the first 100 K. W. H. per month.....10.5c. per K. W.
For the next 100 K. W. H. per month..... 9.5c. per K. W.
For the next 100 K. W. H. per month..... 8.5c. per K. W.
For the next 200 K. W. H. per month..... 7.5c. per K. W.
For all over 500 K. W. H. per month..... 6.5c. per K. W.

Monthly minimum charge, $1.33.

Discount: Bills based upon the foregoing rates are subject to a
count of ten (10%) per cent of the total thereof, when paid on
before the 10th day of the month.

Contract Period, 1 year.

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SCHEDULE E.

Residence and Commercial Lighting Scale, Monthly Basis.

Hartwell, Royston, Lavonia, Canton, Bowersville, Duluth, Ingleside, Clarkston and Stone Mountain, Ga.

For the first 100 K. W. H. per month.....	11c per K. W. H.
For the next 100 K. W. H. per month.....	10c per K. W. H.
For the next 100 K. W. H. per month.....	9c per K. W. H.
For the next 200 K. W. H. per month.....	8c per K. W. H.
For all over 500 K. W. H. per month.....	7c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE F.

Residence and Commercial Lighting Scale, Monthly Basis.

Whitesburg, Ga.

For the first 100 K. W. H. per month.....	12c per K. W. H.
For the next 100 K. W. H. per month.....	11c per K. W. H.
For the next 100 K. W. H. per month.....	10c per K. W. H.
For the next 200 K. W. H. per month.....	9c per K. W. H.
For all over 500 K. W. H. per month.....	8c per K. W. H.

Minimum monthly charge, $1.66.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE G.

Retail Power Scale (within City Limits, Monthly Basis).

Atlanta, Ga.

For the first 100 K. W. H. per month.....	6c per K. W. H.
For the next 400 K. W. H. per month.....	5c per K. W. H.
For the next 500 K. W. H. per month.....	4.25c per K. W. H.
For the next 1,000 K. W. H. per month.....	3.75c per K. W. H.
For the next 3,000 K. W. H. per month.....	3.25c per K. W. H.
For all over 5,000 K. W. H. per month.....	2.75c per K. W. H.

Minimum charge: 83.3c per H. P. connected, but not less than $2.22 per month.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

118 SCHEDULE H.

Retail Power Scale, Monthly Basis.

Suburban Districts, not Incorporated, Adjacent to the City Limits of Atlanta, Ga.

Within ½ mile of Atlanta City Limits: 1c per K. W. H. higher than Atlanta Retail Power Scale.

Beyond ½ mile radius of Atlanta City Limits: 1.5c per K. W. H. higher than Atlanta Retail Power Scale.

Minimum charge: $1.11 per H. P. connected, but not less than $3.33 per month outside of city limits.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

SCHEDULE I.

Retail Power Scale, Monthly Basis.

Decatur, Kirkwood, East Lake, Hapeville, Gainesville, Carrollton, Hartwell, Canton, Royston, Lavonia, Bowersville, Duluth, Clarkston, Stone Mountain, Ingleside, and Whitesburg, Ga.

1c per K. W. H. higher than Atlanta city retail power rates; with minimum charge of $1.11 per H. P. connected, but not less than $3.33 per month.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE J.

Heating and Cooking Scales, Monthly Basis.

Atlanta, Ga.

Within City Limits: 4.44c per K. W. H.

Minimum charge, $1.66 per month.

Outside City Limits: 5.55c per K. W. H.

Minimum charge, $2.22 per month.

Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE K.

Primary Hydro-Electric Rates, Industrial.

Applicability: All territory served by the Company.
Basis for determining Maximum Monthly K. W. Demand:

119 Whenever in any month the customer's actual maximum demand shall exceed the guaranteed maximum demand, such actual maximum demand shall measure the maximum demand and be used as a basis for the primary charge for such month, and for each of the next succeeding six (6) months, unless it is exceeded by a greater maximum demand in some month during the next succeeding six (6) months, in which event the new greater maximum demand, when attained, shall constitute the maximum demand for that month and for each of the next succeeding six (6) months, unless such maximum demand is exceeded within such next succeeding six (6) months, and so on; it being understood that the greatest maximum demand obtained in any month shall constitute the maximum demand for that month and for each of the next succeeding six (6) months. However, after a maximum demand shall be attained in any month and shall not be increased during the next six (6) months the maximum demand shall be again determined anew as at the beginning, and without reference to previous actual maximum demands. In no event, however, shall the maximum demand of any month be less than the guaranteed demand prevailing at the time under the contract.

Peak demands, due to short circuits or accidents to machinery, or momentary starting of motors shall not be counted. The terms month and monthly as herein used, are intended to designate the period between the regular watt hour meter readings which shall be made by the Company approximately monthly.

Rates.

Service Charge: $1.11 per K. W. of Maximum Demand per month plus an energy charge as follows:

For the first	10,000 K. W. H. per month	1.44c per K. W. H.
For the next	10,000 K. W. H. per month	1.22c per K. W. H.
For the next	10,000 K. W. H. per month	1.00c per K. W. H.
For the next	20,000 K. W. H. per month	0.80c per K. W. H.
For the next	50,000 K. W. H. per month	0.70c per K. W. H.
For all over	100,000 K. W. H. per month	0.60 per K. W. H.

Minimum Monthly Charge: K. W. of Maximum Demand Charge.
Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.
Contract Period, 1 year.

SCHEDULE L.

Primary Hydro-Electric Rates.

Central Station or Municipal, Monthly Basis.

Applicability: All territory served by the Company.
Basis for determining Maximum Monthly K. W. Demand—Sa
as Industrial Rates—Schedule K.

120 Rates.

Service Charge: $1.66 per K. W. of Maximum Demand per mon
plus an energy charge as follows: (Same as energy charge f
Schedule K. Subject to same discounts.)
Minimum Charge: K. W. of Maximum Demand Charge.
Discount: Bills based upon the foregoing rates are subject to
discount of ten (10%) per cent of the total thereof, when paid on
before the 10th day of the month.
Contract Period, 1 year.

SCHEDULE M.

Secondary or Dump Power Rate Scales.

Applicability: All territory served by the Company.
By secondary or dump power is meant power which the Co
pany may be able to deliver in excess of the power required, reserve
sold or supplied as primary power, and the Company reserves to its
the right to shut off or discontinue, or to resume the delivery of sa
secondary power at its option.
(This scale does not apply to reciprocal contracts entered into wi
other power companies.)
Rate: 0.99 cents per K. W. H.
Yearly Guarantee: $13.33 per H. P. connected.
Discount: Bills based upon the foregoing rates are subject to a d
count of ten (10%) per cent of the total thereof, when paid on
before the 10th day of the month.

SCHEDULE N.

Seasonal or Rural Rate Scales.

Applicability: All territory served by the Company.
(This service is applicable for gins and other industrial develo
ments operating only a part of the year.)

Rates.

Service charge for those months when connected $1.11 per K. W. of Maximum Demand plus energy charge as follows:

For the first 10,000 K. W. H. per month.....1.44c per K. W. H.
For the next 10,000 K. W. H. per month.....1.22c per K. W. H.
For the next 10,000 K. W. H. per month.....1.00c per K. W. H.
For the next 20,000 K. W. H. per month.....0.80c per K. W. H.
For the next 50,000 K. W. H. per month.....0.70c per K. W. H.
For all over 100,000 K. W. H. per month.....0.60c per K. W. H.

Minimum Monthly Charge: K. W. of Maximum Demand Charge.

121 Discount: Bills based upon the foregoing rates are subject to a discount of ten (10%) per cent of the total thereof, when paid on or before the 10th day of the month.

Contract Period, 1 year.

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwise provided for.

For the first 10,000 cu. ft..... $1.55 per 1,000 cu. ft.
For the next 20,000 cu. ft..... 1.45 per 1,000 cu. ft.
For all over 30,000 cu. ft..... 1.35 per 1,000 cu. ft.

Discount: Subject to 10c. per 1,000 cu. ft. discount if bills are paid on or before 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability College Park, Decatur, East Point and surrounding territory.

Rate: $1.65 per 1,000 cubic feet per month.

Discount: Subject to 10c. per 1,000 cu. ft. discount if bills are paid on or before 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the Georgia Railway and Power Company file with this Commission, monthly statements showing the result of its operations—that is, receipts, disbursements, etc., in detail, showing also comparison with operations for the same month in the preceding year.

Ordered further: That the special provisions embraced in the order of the Commission dated August 14th, 1918 as to the form of printed contracts to be used, the furnishing of free service, the cancellation of preferential contracts, etc., be and they are hereby continued in force.

SCHEDULE Q.

Street Car Fares.

Effective October 1st, 1920, applicant is hereby authorized to charge and collect as its maximum passenger fare, the sum of seven (7) cents per passenger, where a six (6) cent fare is now charged for one continuous ride over and on its city and suburban lines of railway, or any zone thereof as now established, except such fares on the Main Decatur and College Park routes as are fixed by contracts between the Company and the Cities of Decatur and College Park held by the Supreme Court of Georgia to be valid contracts and

122 Except, on the Buckhead, Oglethorpe University and Camp Gordon route, the maximum fares on which shall be as follows: Between Atlanta terminus and Buckhead, seven (7) cents; between Buckhead and Oglethorpe University, six (6) cents, and between Oglethorpe University and Camp Gordon terminus, six (6) cents, the total maximum fare between Atlanta and Camp Gordon to be nineteen (19) cents; and

Except on the River route, the maximum fare on which shall be as follows: Between Atlanta terminus and Fisher's Avenue, seven (7) cents and between Fisher's Avenue and the river terminus five (5) cents, the total maximum fare between Atlanta and the river to be twelve (12) cents; it is

Further ordered: That applicant shall sell at its offices and through its conductors books of tickets containing fifteen (15) coupons, each good for one ride and transfer if desired, at the price of one dollar ($1.00), it is

Further ordered: That no charge shall be made in the existing rules and practices of applicant as to the grant and use of transfers or the transportation of infant children.

Ordered further: That not less than three days prior to the effective date hereof the applicant shall post in all of its passenger cars notice to the public of the increased fares herein authorized and the effective date thereof.

SCHEDULE R.

Stone Mountain Route.

Ordered further: That the following schedules of passenger rates shall be the maximum rates to be charged by the Georgia Railway & Power Company on its passenger cars between Atlanta and Stone Mountain and between zones as described:

Cash Fares.

From—	To— Stone Mtn.	Mt. Zion.	Clarkston.	Scott-dale.	Decatur.	Atlanta.
Stone Mtn.....	$.00	$.06	$.12	$.18	$.24	$.30
Mt. Zion.....	.06	.00	.06	.12	.18	.24
Clarkston	.12	.06	.00	.06	.12	.18
Scottdale	.18	.12	.06	.00	.06	.12
Decatur	.24	.18	.12	.06	.00	.10
Atlanta	.30	.24	.18	.12	.10	.00

Provided however: That the Georgia Railway & Power Company shall put on sale at its office and with conductors, commutation ticket books containing 54 coupons, each good for one continuous ride between the points or zone specified, if used within 35 days from date of purchase and presented by the person buying and signing the ticket, at the following rates:

123 Between Atlanta and Scottdale..... $5.10 per book.
Clarkston ..... 6.48 per book.
Mt. Zion ..... 7.92 per book.
Stone Mtn. ..... 9.30 per book.

Notice to the public of the above authorized increases effective October 1st, 1920, shall be given as required on applicant's city lines.

SCHEDULE S.

Gainesville (Ga.) Lines.

Ordered further: That the Georgia Railway & Power Company be and it is hereby authorized to charge as a maximum fare on its passenger cars, between all points and on all lines at Gainesville, Ga., eight (8) cents cash fare.

Provided however: That the Georgia Railway & Power Company shall put on sale at its office and with conductors at Gainesville, Ga., tickets or books containing thirteen coupons, each good for one continuous ride and transfer if desired, at the price of $1.00 per book.

Notice to the public of the above authorized increases effective October 1st, 1920, shall be given as required on applicant's Atlanta City lines.

Additional Service Facilities.

The record in this application convinces the Commission that additional facilities are reasonably required in the different departments of applicant's public service, some of which immediately, and it is therefore

Ordered:

1. That applicant take immediate steps to improve the Gas pressure in West End, Ansley Park and Virginia-Highland Avenue sec-

tions, and to increase its output of gas so as to adequately meet th demands of the public for service. The record in this case con tains in President Arkwright's testimony an enumeration o urgently needed improvements and additions. Applicant is di rected to report in writing to the Commission, not later than No vember 15th next the steps taken to carry into effect, at the earlies practicable date, the provisions of this requirement.

2. That as early as practicable, and if the necessary equipmen can be secured within six months from October 1st, 1920, applican shall place in service on its City and Suburban street car route during the morning and afternoon rush hour periods as now estab lished, additional seating capacity equal to twenty per cen
124 of the seating capacity now provided, except as to the Mai Decatur and the College Park routes, on which two name routes, trailers shall be operated on each schedule now operate during the above mentioned rush hours.

Applicant is directed to report to the Commission in writing no later than November 15th next, what steps it has taken to carry int effect the provisions of this requirement.

3. That as early as practicable, within four months from Octobe 1st, 1920, if necessary materials are obtainable, applicant shall re build and place in first class operating condition the Gainesville Winder electric transmission and distribution lines, so as to ade quately and efficiently serve the public in Winder (Ga.) and vicinity

Applicant is directed to report to the Commission in writing no later than November 15th next what steps it has taken to carry int effect the provisions of this requirement.

By order of the Commission.

C. M. CANDLER,
Chairman.

ALBERT COLLIER, *Secretary.*

125 EXHIBIT No. 7.

Office of the

Railroad Commission of Georgia,

Atlanta.

File 13946.

In re GEORGIA RAILWAY & POWER COMPANY, Application for Increase in Gas Rates.

By the Commission: February 10th, 1921.

The Georgia Railway & Power Company, hereinafter referred t as applicant, filed its application with the Commission on Novembe 20th, 1920, asking that it be allowed to charge the following sca of rates for gas:

Atlanta and Surrounding Territory.

For the first 10,000 cu. ft.	.....	$2.25	per 1,000 cu. ft.
For the next 20,000 "	.....	2.15	" "
For all over 30,000 "	.....	2.10	" "

Subject to 10 cents per 1,000 cu. ft. discount for prompt payment. Minimum monthly charge per meter, $1.50.

College Park, Decatur and East Point Territory.

Per 1,000 cu. ft.	.....	$2.50

Subject to 10 cents per 1,000 cu. ft. discount for prompt payment. Minimum monthly charge, $1.00.

Applicant insisted that the rates allowed by this Commission effective October 1st, 1920, failed by more than 26 cents per thousand cubic feet to yield sufficient revenue to pay operating expenses, taxes and depreciation. That the Gas Department of applicant's property actually donated the use of this property to the public during the month of October and in addition actually furnished gas service to its customers at a direct loss of 26½¢ per thousand cubic feet, which loss in the aggregate per day amounted to more than $1,000, or at the rate of $30,000 per month, allowing nothing in the way of return on its property.

Applicant insisted that it be allowed the rates hereinabove
126 recited, insisting such rates are necessary to pay for the cost of service and give it even less than the lawful rate of interest in Georgia, by way of return on its property on what it claims to be a fair value of its gas property in the sum of $8,163,079.53.

Applicant in support of its claim as to the value of its property, has made an appraisal of said property by A. J. Luick, for W. A. Baehr, a consulting engineer of high reputation and character.

The case made by applicant was heard by this Commission on January 13th, and at the hearing the results of its operations from Oct. 1st 1920, to and including December 1st, 1920, and since the date of said hearing, its business for December, 1920, has been ascertained with the following results:

Gross income, Oct. 1920	$148,873.66
Gross income, Nov. 1920	179,613.20
Gross income, Dec. 1920	179,689.57
	$508,176.43

Less operating expenses as follows, not allowing for taxes, depr
ciation, with no consideration for income on property:

October, 1920	$171,265.0
November, 1920	187,972.0
December, 1920	210,245.5
Total	$569,482.6
Giving a deficit of	61,306.2
To this amount must be added taxes in the sum of	21,354.5
Also as a matter of right, allowance for depreciation	19,833.1
Total loss for 3 mos. Oct. 1 to Dec. 31, both Inc.	$102,493.8

These figures give no consideration in the way of a return o
applicant's property on a value in any sum. Thus it will be see
for the 92 days taken into account for the months referred to, appli
cant sustained an actual loss of $102,493.84. This of course allow
for depreciation, which must be considered and taken care of but a
stated, gives no income in the way of return on property value.

This Commission has given much time to the consideration o
this case. The value of applicant's property as set up by i
127 in the sum of $8,183,079.53, we think is too high. For th
purpose of this case we are going to adhere to the value con
sidered for this property by this Commission in 1918, which gave
value of $3,500,000, plus actual additions and usual allowances
When this value was fixed by this Commission in 1918, we took
occasion to say then as to the value of applicant's property as a
whole, "We have not undertaken to arrive at actual values, but have
estimated minimum values." If the value considered by the Com
mission in 1918 of $3,500,000 was correctly stated as a minimum
value, can there be any doubt that it is any more than a minimum
value of this date?

In discussing the value of applicant's property as a whole in 1918
in the case before this Commission, file 13946, which consideration
covered the gas properties now under consideration, the Commission
further said, "The Commission is abundantly satisfied that it can
without difficulty, arrive at a very conservative estimate of the
minimum value of the property of this Company in the public use.
The Company may complain at our use of a minimum value rather
than the fair value but certainly the public cannot."

The case considered and passed upon in 1918 as well as the
language quoted from a statement issued by the Commission at the
time, had the unanimous support of the Commission which fixed
the value of $3,500,000 in 1918, and the same value, as heretofore
stated, is adhered to at this time, plus additions, unifications, etc.
We may say that for only the same reasons as given by the Com
mission in its decision in 1918, can we at this time arrive at the
minimum value of applicant's gas properties.

This Commission, nor any other that we know of, takes outstanding capitalization as the fixed measure of values. We think it hardly necessary to say in this case, in view of what has already been
128 said, that any consideration in the way of capitalization has been given in any sum.

We allow for applicant's gas properties not including Decatur plant, a value of	$3,500,000
To this we add the Decatur plant	170,000
Additions, actual cash put in property, January 1st, 1918 to Dec. 31st, 1920	296,621
For adaptations, unification, etc	396,662
Working Capital	170,352
Total	$4,533,635

The value of applicant's gas properties considered for the period of time as sued above, viz: October, November, December, applying the rates approved in this case, gives applicant approximately 5% on its gas property, using the minimum value of said property. The increases allowed at this time cannot take care of nor replace the actual out-of-pocket loss already sustained by applicant, neither can it provide an income to give a return such as it failed to make for the entire year of 1920, as a whole, which return is guaranteed it by the laws of our State. While the information we have of applicant's business in January 1920, is as yet to a degree an estimate, we are sure that it will show a worse result in January than for the average time represented in the three months of 1920 heretofore referred to. The three latter months of 1920 are used because it dayes from the effective date of the increase in gas rates, no other period of time can be used with any degree of certainty; and the three months in question being months of the greatest consumption of gas, any other period of time would show less favorable results for the Company.

It may be said that this is a transitory period through which we are passing; that the values of the commodities going into the manufacture of gas are gradually going down. The truth is such reductions are less than negligible.

Only the best grade of coal can be used in the manufacture
129 of gas. Such coal cost Jan. 1921, $8.21, for the last four months, 1920, average of $8.75, and for the last six months of 1920, an average of $8.41 per ton. Gas Oil cost Jan. 1920, 7¢ per gallon, May, 1920, 12¢ per gallon, June, 13¢ per gallon, and July, 13¢ per gallon. Since July it has cost slightly more than 12¢ per gallon. In 1918 gas oil was bought for 5¢ per gallon, 1919, 4¢ per gallon. The following monthly charge for gas to customers using 2,000 cu. ft. of gas per month at points named is mentioned illustrating the general increased price in the cost of gas throughout the country; Orlando, Tampa, St. Augustine and Tallahassee, Fla. are paying today $4.00 to $4.50, or at the rate of half this price per M cubic feet. Bristol, Tenn., $4.20; Nashville, $4.10; Greenville,

S. C., $4.20; Florence, S. C., $4.00; Charlotte, N. C., $4.00; Gastonia N. C., $4.80; Raleigh, N. C., $4.50, Greensboro, N. C., $4.50.

Can it be said that a utility must go on day after day and month after month with an actual loss of more than $1,000 per day on the actual bare service it furnishes the public without one penny in the way of return on its property?

We know that this is an unfortunate time to add increases in the way of expenses, yet we have not the right as a matter of law to confiscate the property of this Company nor that of any other utility Company. To permit a continuation of the losses now incurred by this Company would be confiscation of the rankest sort and were we to so far forget ourselves as to support such a proposition, the result in the end would be a loss and a hardship on the public as well as the Company.

The public can rest assured that immediately conditions justify a lower rate than is prescribed in this case, this Commission will of its own initiative give such a condition immediate consideration.

130 On the question of what constitutes a proper return for utilities property, we quote the following from the Supreme Court of California in the San Diego Water Company case, 118 Cal. Page 588:

"In fixing water rates, it is the duty of the City Council to provide for a just and reasonable — to the Water Company. Anything short of that is simple confiscation, and is not only a violation of constitutional rights, but is an extremely shortsighted policy. Rates ought to be adjusted to the value of the service rendered and this means that the water companies should be allowed to collect annually a gross income sufficient to pay current expenses, maintain the necessary plant in a state of efficiency and declare a dividened to stockholders equal at least to the lowest current rates of interest, not on the par or market value of the property necessarily used in providing and distributing the water to consumers."

At the hearing of this case a large number of applicant's customers appeared and gave evidence of the poor service applicant was furnishing. It was referred to by some as a poor quality of gas, the claim was made by others that the trouble was on account of a low pressure of gas. The Company admitted the contentions, largely, of protestants as to its service.

It was claimed by applicant that the chief cause of this poor service in the way of low pressure gas was on account of it being unable to purchase needed additional equipment. It is our opinion that the lack of equipment is one of the real causes of the poor service experienced in Atlanta for several months. Applicant says that it was unable to purchase such equipment on account of its financial condition. We are unable to say that this is not true. We do know that immediately the increase was granted effective October 1st, 1920 applicant renewed orders which had previously been cancelled and so far as we have been able to determine, has exercised every effort

nstall this new equipment, and where installed, relief has largely been given.

After the hearing of this case, the Commission was able to 131 secure the services of a gas expert from the Bureau of Standards at Washington. We will not go into even a brief discussion of his report. We feel that it is fair to say that this report to a considerable degree, sustains the contentions of both applicant and protestants. We feel sure with the recommendations made by the report referred to, that an improvement will result and that just as soon as applicant is able to fully complete the additions required by this Commission, under its decision in 1920, the complaints of poor gas service in Atlanta will be brought to a minimum. To this end the Commission will exercise its best efforts.

Our observation is that another trouble in furnishing gas throughout the country has been the abnormal large increase in the use of gas for heating purposes. We assume this has resulted because of the desirability in the use of gas for heating, as well, somewhat, on account of the economy afforded.

The Commission has concluded that the rates which we approve for Atlanta and surrounding territory not otherwise provided:

For the first 10,000 cu. ft.	.....	$2.00 per 1,000 cu. ft.
For the next 20,000 "	.....	1.95 " "
For all over 30,000 "	.....	1.90 " "

Decatur, College Park, East Point and surrounding territory, $2.10 per 1,000 cu. ft.

Subject to 10¢ per thousand cu. ft. discount on all bills paid on or before the 10th of the month.

Minimum monthly charge: $1.00.

is the lowest possible rate that can be justified, giving any consideration to return on applicant's property which applied to a test already experienced, gives them a return of approximately 5% per annum, on the minimum value of the property under consideration.

132

Office of the

Railroad Commission of Georgia,

Atlanta.

In re Application of GEORGIA RAILWAY & POWER COMPANY for Increased Gas Rates.

February 10, 1921.

Upon consideration of the record in the above stated application, it is

Ordered: That the following schedules of rates shall be the maximum rates to be charged by the Georgia Railway & Power Company for gas metered on and after March 1st, 1921, and until further ordered by this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwis provided for.

For the first	10,000 cubic feet	$2.00	per 1,000 cu. ft
For the next	20,000 " "	1.95	" " " "
For all over	30,000 " "	1.90	" " " "

Discount: Subject to 10 cents per 1,000 cubic feet discount if bill are paid on or before the 10th of the month.

Minimum Monthly charge: $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point and surroundin territory.

Rate: $2.10 per 1,000 cubic feet per month.

Discount: Subject to 10 cents per 1,000 cubic feet discount if bill are paid on or before the 10th of the month.

Minimum Monthly charge: $1.00 per customer meter.

The above schedules of rates are made necessary by present pre vailing cost and quality of coal and gas oil, and cost of labor. When these costs shall be materially reduced, these schedules of rates wi be revised accordingly.

By order of the Railroad Commission of Georgia:

(Signed) C. M. CANDLER,
Chairman.

(Signed) ALBERT COLLIER,
Secretary.

133 EXHIBIT No. 8.

Office of the

Railroad Commission of Georgia,

Atlanta.

File 13946.

In re Gas Rates in Atlanta and Vicinity.

March 10th, 1921.

By the COMMISSION, Commissioner Boifeuillet dissenting:

On February 10th last, after investigation and earnest conside ation, this Commission issued an order prescribing a new step sca

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gas rates for the Georgia Railway and Power Company applicable n Atlanta and vicinity.

Following the promulgation of this order there has been much arsh criticism by individuals of all of the Commissioners favoring he increases granted, some of these criminally libelous.

The criticism of the official conduct of public servants is permisible, and no member of this Commission has the right to object hereto. Its members do protest against attacks on their personal nd official integrity.

This statement, however, is not in reply to these attacks, but is ntended merely to give to the public the salient facts and principles f law controlling the Commission's action.

The last paragraph of the Commission's order of February 10th is s follows:

"The above schedules of rates are made necessary by present preailing cost and quality of coal and gas oil, and cost of labor. When hese costs shall be materially reduced, these schedules of rates will e revised accordingly."

The report of the Commission accompanying this order contained he following paragraph:

"The public can rest assured that immediately conditions justify lower rate than is prescribed in this case, this Commission will of its own initiative, give such condition immediate consider-34 ation."

Representations are made to this Commission that since the date of he cost sheets presented to the Commission in the hearing, the comodities entering into the manufacture and distribution of gas have aterially fallen in price, and the Commission is requested to take he matter of rates under consideration.

The rates prescribed in the order mentioned were, in the judgent of a majority of the Commission, required by the evdence and e law. This Commission did not make the law. It cannot amend Its members are sworn to observe and obey it. Its duty in a rate se is well and plainly defined.

It is the duty of the Commission to test the evidence submitted and igh and pass upon the same in every reasonable way in its power. This it did in this case, disregarding such evidence, even when orn to, as in its judgment was erroneous, irrelevant, immaterial in any way mistaken or not in accordance with the actual facts the truth.

The Law.

Code Section 2630 declares:

"The power to determine what are just and reasonable rates and arges is vested exclusively in said (the Railroad) Commission."

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Code Section 2631 requires the Railroad Commissioners to make f
each of the corporations subject to its jurisdiction "a schedule of ju
and reasonable rates or charges."

Whether wisely or unwisely, Code Section 2662 places local uti
ties, gas and electric light and power companies, by name, under t
jurisdiction of the Railroad Commission.

Just and Reasonable Rates Defined.

In Smythe vs. Ames, 169 U. S. Reports, the Supreme Cou
135 of The United States said, "We hold however that the be
of all calculations as to the reasonableness of rates, must
the fair value of the property being used for the public convenienc
And in order to ascertain that value the original cost of constructio
the amount expended in permanent improvements, the amount a
market value of its bonds and stocks, the present as compared wi
the original cost of construction, the probable earning capacity
the property under particular rates prescribed by statute and
sum required to meet operating expenses, are all matters for co
sideration and are to be given such weight as may be just and ri
in each case * * *. What the Company is entitled to ask i
fair return upon the value of that which it employs for the publ
convenience. On the other hand, what the public is entitled to
mand is that no more be exacted from it * * * than the se
ices rendered by it are reasonably worth."

The legal principles thus laid down are accepted, as they must b
by every court and commission in the Country.

Value to be Determined as of the Time when the Rate Inquiry Made

The Willcox vs. Consolidated Gas Co. 212 U. D. Reports, the S
preme Court of the United States said (H. N.) "For purpose of fixi
rates the value of property employed should be determined as of t
time when the inquiry is made, and as a general rule, the corpo
tion is entitled to the benefit of increased value since acquisition."

Two Fundamental Inquiries.

There were in this case as in every rate case, two fundamental i
quiries, to-wit:

1. The fair value of the property in use at the time of the inqu
that is in January 1921;

2. The actual earnings under the rates in effect at that time, a
their sufficiency.

136 The General Assembly has placed upon this Commis
exclusively, the duty of ascertaining the facts.

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In ascertaining them, it may not be that the expert assistance of engineers and accountants is absolutely necessary, but such assistance is extremely desirable.

The General Assembly has not provided the Commission with Engineers or Accountants, nor with the funds for their employment. The Commission therefore must work without instrumentalities of its own and dig out the truth as best it can. This the writer solemnly asserts, he has for twelve of the best years of his life, honestly and without favor or prejudice, undertaken to do, and always with the cooperation of his colleagues.

It was done in this case and nothing but the law, the facts as he believed them and his conscience have influenced him.

Estimated Fair Value of the Gas Properties; How Reached by the Commission.

It so happened that until 1918 this Commission had no occasion to appraise for rate making purposes the Atlanta Gas Light properties.

Confronted with a rate increase application in that year, the question of value had to be passed upon.

At a public hearing on this rate application, in which consumers and the City of Atlanta appeared by counsel, the Company offered the evidence of Mr. A. E. Forstall, an Engineer who qualified as devoting special attention to gas plant construction and operation and claiming an extensive practical experience. He testified that in his opinion, the fair value of the physical properties in use January 1st, 1918, working capital not included, was $4,331,300. This estimate was he testified based upon an inspection of the plant and system, and upon his experience, and tested by a general rule of approximate correctness as demonstrated by experience that
137 in an average gas plant an investment of $4.00 was required for each 1,000 cubic feet of gas sold.

No other evidence of value was introduced by any one. The Commission did not accept this valuation.

During its consideration of the case it was recalled by the Commission that in the application of the Georgia Railway & Power Co. for approval of its capitalization plan in 1912 there appeared among the items or organization expenses desired to be capitalized an item of several thousand dollars for an inventory and appraisal of the Georgia Railway & Electric Company, which had been leased to the Georgia Railway & Power Company.

This inventory and appraisal having been made apparently as one for possible future settlement or reference as between lessor and lessee; so far as the Commission knew not for use before the Commission and without reference to any rate matter, it occurred to the Commission to call for it, in order that it might be checked against Mr. Forstall's evidence, which was not satisfactory to the Commission.

Upon production and examination the Commission found that it was apparently an exhaustive and detailed inventory and appraisal,

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made after months of work by Mr. W. A. Baehr, an Engineer
recognized character.

He estimated the then (1912) fair value of the depreciated A
lanta Gas Physical properties, exclusive of any Decatur properti
not then in existence, at $3,174,664, and including intangible
going concern value and working capital at $4,455,664.

The Commission did not accept this 1912 valuation.

In the early part of 1918 the Commission, upon complaint fro
consumers had occasion to investigate the character of gas supplie
in Atlanta and service conditions generally.

138 It had secured the services of Mr. R. S. McBryde, a G
Engineer of the Federal Bureau of Standards, Washington.

After Mr. McBryde's investigation and report, the question
proper restoration to consumers because of inferior gas arose an
this in turn involved the question of plant values, earnings ther
from, etc.

Discussing this question, Mr. McBryde submitted the followin

"The proper allowance for return and depreciation, of course, d
pends upon the rate-making value of the property. The capitali
tion of the Company totals about $2,750,000. The Company clai
a value of the property of 5 million dollars. By comparison wi
other companies having approximately the same number of cus
mers, it seems that this latter figure claimed by the Company is ve
much higher than need be considered for rate making purposes a
though it may possibly be a reasonable book value for the compan
to carry if they were considering sale of the property. A compar
son with other companies indicates that the value of the proper
for rate making purposes probably lies between 3 million dolla
and 4 million dollars. Let us assume $3,500,000 for sake of di
cussion."

Instead of adopting the figures by Mr. Forstall of January 1, 191
$4,331,300 for physical values alone, or the 1912 figures of M
Baehr for the Atlanta physical properties alone, $3,174,664 plus th
Decatur property subsequently acquired and subsequent additio
to the Atlanta properties, exclusive of going concern value and wor
ing capital, the Commission reached the conclusion that $3,500,0
fairly approximated the minimum value of the physical properti
in 1918.

The gas sales in 1918 were 1,091,000 cu. ft.; applying Mr. Fo
stall's rule of $4.00 of actual investment for every 1,000 cu. ft.
gas sales, a value of $4,364,000 would result.

139 In the report of Mr. E. W. Trafford, Director of the D
partment of Public Utilities, Richmond, Va., upon operati
of the municipal Gas Plant in that City, for the year 1919, page 1
there appears the following:

"It was customary in pre-war times to consider that each thousa
cubic feet of annual sales of gas required a capital investment
$3.00 in the work and distribution mains. The present high pri
of material and labor would make the investment today nearly $5.
per thousand."

Applying the $3.00 pre-war investment per 1,000 cu. ft. as Mr. Trafford says was customary, to sales in Atlanta in 1918, during the war, a valuation of naked physical properties in plant and distribution system, $3,275,000 is obtained, to which if tangible values, for the estimated going concern, of 10% or $327,500 and working capital of $100,000 are added, a value of $3,702,590 is established. If Mr. Trafford's war time figures of $5.00 per 1,000 cu. ft. is used, physical property values aggregate $5,458,470. If an average of "pre-war" and "during war" units is used, to-wit, $4.00, the physical property value alone would be $4,367,000.

These figures contract with the total 1918 valuation for the entire plant used by the Commission, to-wit, $3,500,000.

The January 1921 Valuation.

The base value adopted by the Commission in the case decided February 10th last, was arrived at by taking the:

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January 1st, 1918 Commission depreciated value on physical properties	$3,500,000
and adding thereto the cost value, depreciated of the Decatur property	170,000
The cost value, actual payments, of additions to the physical properties, Jan. 1st, 1918 to Dec. 31st, 1920, inclusive	296,621
Total depreciated physical properties	$3,966,621
The courts not only recognize, but compel the allowance of some value for an established attached business and what is commonly known as going concern value. The rule of this Commission for years, where a concern is doing all the business of which it is capable, has been to allow about 10% of physical property values for this intangible value, or in this case about	396,662
As the Company does not collect its bills until sometime after the services are rendered and as it must carry in stock a considerable quantity of materials and supplies and meet pay rolls weekly or monthly, a sum for working capital is necessary. The rule of this Commission has been to allow approximately 10% of annual gross income or in this case	170,000
Total Rate Base—January 1921	$4,533,635

This valuation may be contrasted with one arrived at by applying Mr. Forstall's investment unit of $4.00 per 1,000 cu. ft. on 1920 actual sales of 1,387,932,100 cu. ft. physical properties alone 5,551,72
plus intangibles and working capital 6,281,90
or with Mr. Trafford's pre-war investment unit of $3.00 physical properties only 4,163,79
plus intangibles and working capital 4,755,17
or, with Mr. Trafford's War unit of $5.00 physical properties only 6,939,66
plus intangibles and working capital 7,808,62

The Company's 1921 Valuation.

The total base value used by the Commission $4,533,000 for the Atlanta and Decatur properties, contrasts with a claimed value by the Company on an appraisal by Mr. A. J. Luick, Engineer, on physical properties alone, depreciated, of, ... 6,606,3
or including going concern value and working capital as set up by President Arkwright of 7,860,6

The Commission desires to repeat with the utmost emphasis, state ments repeatedly made that it has not in this (or in any other case considered capitalization as the basis of the rates heretofore pre scribed.

141 Fair value of the property in use or useful is the only basi it has used, and whether the capitalization of the Georgi Railway & Power Company is watered or excessive or not, it ha not entered into our consideration as a rate factor.

Actual Earnings of the Company.

The Commission frankly states that it has heretofore been com pelled, more or less, to form conclusions as to the net earnings of th Company from accounting data, figures and information furnishe by the Company. It has not been in a position to check the operat ing reports of the Company as satisfactorily as it has its proper value claims.

Nevertheless it has earnestly endeavored to so study and analy the sworn reports and statements of the Company as to find th truth as to its operations.

The $1.45 base rate under which the Company was operating at the time of the hearing, became effective October 1st, 1920. Th Commission therefore studied closely complete operating results fo October, November and December 1920, and as far as possible, fo January 1921.

This study showed for the three months, an actual operati deficit, excluding taxes and depreciation, of $61,000; includi taxes the deficit was $82,000 and including depreciation, $102,000.

Operating expenses must be paid; taxes must be paid; depreciation or gradual destruction of property by use, must be provided for. The majority of the Commission is satisfied that its legal duty is to base rates upon conditions as they are at the time of the rate inquiry. They cannot, in its opinion, base on conditions of a year or six months ago.

The majority of the Commission does not believe that they can be based upon a guess, a theory or a hope as to what they will be six months or a year in the future.

142 Our Commission law in requiring the Commission to change and revise prescribed rates from time to time, "as circumstances may require", particularly affirms the correctness of this view.

It is not deemed necessary in view of the Commission's purpose as stated hereinafter, to have an audit as to earnings, to go further, in this statement, into a discussion of actual earnings.

We have no accountant; we have no funds with which to employ one.

We have peculiarly felt the need of such, just as we need gas and electric and rail inspectors.

The writer has urged upon committees of the General Assembly the urgent needs of the Commission for such expert, as well as clerical help.

This Commission has exhausted every method open to it for securing an inventory and appraisal of the properties of the Georgia Railway & Power Company and a thorough study and audit of its books, accounting and operating records.

Several years ago it undertook an appraisal of its Atlanta Electric properties under an agreement with the City of Atlanta.

After the work had proceeded for a length of time, the City withdrew its complaint and requested the ending of the appraisal.

Subsequently the Commission has twice proposed to the City of Atlanta to undertake an appraisal and an audit if the City would bear part of the expense, the Company to bear its share.

The last proposal was that the City should pay 25% of the cost.

These propositions were declined.

If this Commission, in the instant case, has been misled, or deceived or over-reached by the utility, it desires to know it. If we have erred in any way, it desires to ascertain to what extent, and to correct such error.

143 We have asked Governor Dorsey to provide us with funds out of his Contingent Fund, for the purpose of an audit. He was entirely willing to give it, had this fund not been completely exhausted already.

The members of the Commission have agreed to individually bear the expense of an audit of the Gas Department of the Georgia Railway & Power Company since January 1, 1920 to March 1, 1921, and have already employed the firm of Haskins & Sells, Certified Public Accountants, New York, to make this audit, under the personal supervision of their Atlanta Manager, Mr. L. C. Matthews.

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Mr. Matthews is capable and honest and his only instructions a to ascertain the truth and report to this Commission.

The Commission is also making an effort to find a way in whi to have an appraisal of the Gas properties, should the expense n be prohibitive.

Service Conditions.

During the past three years the Commission has had three differe Gas Engineers from the Federal Bureau of Standards to visit A lanta and examine into service conditions.

Their reports have been made public.

There have been criticisms of the service in certain sections ar in limited areas. The causes of trouble with the gas have been a parently pointed out. Remedial steps have been taken, and w early be completed. The Commission issued an order on that su ject last October. It has taken, necessarily, time to make these e tensive improvements.

Approximately $600,000 has been or will be spent in carryi through these needed improvements, the Commission is informe The Commission's Auditor has been asked to check up these e penses and report to the Commission thereon.

144 The Commission has asked Mr. Matthews to expedite h work as rapidly as is consistent with thoroughness and repo at the earliest possible date.

Commodity Prices and Conditions.

The Commission is also instituting a careful and full inquiry in the present and probable prices of gas coal, gas oil and other m terials entering into the manufacture of gas and into labor wag both common and expert.

It has requested Mr. Matthews to report fully on these costs they appear in the Company's records, as to uncompleted contra and prices therein, on all materials, etc.

Conclusion.

Until the information being sought in all the ways mentione above and now being gathered can be laid before the Commissi and studied, the majority of the Commission is of the opinion th a re-opening or re-hearing in the matter of gas rates in Atlanta a vicinity should not be had.

The requests before the Commission will be kept on our dock and upon completion of the audit and the gathering of other i formation sought, final action on these requests will be had.

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145 EXHIBIT No. 9.

Office of the
Railroad Commission of Georgia,
Atlanta.

File No. 13946. Spl. No. 114.
In re Gas Rates in Atlanta and Vicinity.

May 28th, 1921.

BY THE COMMISSION, Commissioner Boifeuillet dissenting:

In January last this Commission heard the application of the Georgia Railway & Power Company for an increase in its gas rates in Atlanta and vicinity. The hearing was full and exhaustive and all parties desiring to be heard, were heard.

On February 10th an order was issued, prescribing a new step scale to be effective March 1st, with a base rate of $2.90 per 1,000 cubic feet and a discount of 10 cents per 1,000 cubic feet on bills paid not later than the 10th of the month. The base rate for Decatur, College Park and East Point, was $2.10 per M. cu. ft. with the same discount.

The rates prescribed were based upon an estimated fair value by the Commission, of the Company's gas properties in use, including working capital, of $4,533,635, and the results of operations under the then existing rates for the year 1920 and for the three months of 1920, ending December 31st, 1920, separately.

For the three months' period the Commission estimated that the Company's deficit, including operating expenses, taxes and depreciation, was approximately $102,000.

Subsequently the Commission received petitions for a rehearing in the matter, and on March 10th, stated that it was taking steps to secure an audit of the Company's business by Accountants, an appraisal of its properties by an Engineer, and a thorough inquiry into
146 the contractual prices of coal, oil, and labor, their permanency and probable trend, and that final action on these requests for a re-hearing would be deferred, pending these inquiries.

The Commission employed Prof. Henry Earle Riggs of the University of Michigan, to make the appraisal. His report is voluminous. He estimated the fair value of the properties in use, including "working Capital," at $5,299,436.

Prof. Riggs allows for "working capital," a much larger sum than did the Commission. We are of the opinion that his allowance, especially in view of the recently reduced cost of materials, is too liberal.

The Commission employed Messrs. Haskins & Sells, of New York City, Certified Public Accountants, to make the desired audit. Their report is exhaustive and voluminous. They report the books of the Company for the three months' period as showing an operat-

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ing loss, excluding taxes, interest and depreciation, of $67,922, to which we have added taxes and depreciation, with which there is a deficit of $109,110.

Messrs. Haskins & Sells direct the attention of the Commission to two items of expense, to-wit: $11,024, which they suggest should be deducted from operating expenses; and $73,979, excess over maintenance reserves, actually paid out during fourteen months ending February 28th, 1921, $29,852 of which they set up for the last three months of 1920.

With an adjustment of those items, the actual operating loss, excluding taxes and depreciation, was $27,869. Adding taxes and depreciation, the deficit for the three months was $69,056.

The Commission thinks the first item of $11,024 is deductible. The excess maintenance charges over the arbitrary reserve set up were actual expenses, but probably represented an appre-
147 ciable amount of deferred maintenance.

Messrs. Haskins & Sells also reported on operations for January and February, 1921, showing earnings, excluding taxes, interest, depreciation and adjustments, of $29,179.

Deducting taxes and depreciation, the remainder of earnings was $1,620, or including adjustments, $21,111.

The above studies show results of operations, under the $1.45 rate effective October 1st, 1920, for five months ending February 28th, 1921 as follows:

	Without adjustments.	With adjustments.
Net loss 5 months	$109,489	$47,944

The report states that proper entries and credits have been made and allowed for all merchandise handled and "manufactured and sold."

Under the requirements of the order of the Commission, reports of operations under the new rates for the months of March and April have been filed.

The effect of the increased rates was not fully reflected in March operations nor does the April report reflect only the results of operations for that month. For present purposes we have combined the two months operations with the following results:

Total revenue, all sources		$402,84
Operating Expenses	$258,569	
2 months' taxes	15,629	
2 months' depreciation	13,222	
Total	$287,421	
Net Earnings	115,423	
	$402,844	

Should April conditions, prices of materials, labor and other cost items and the same volume of business continue throughout

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a full twelve months' period, net earnings under the $2.00 base rate would approximate $692,000.

148 In its consideration of the operating expenses of the Company for 1920, the Commission used the following principal material costs.

	Coal per ton.	Oil per gallon.
October	$8.68	12.67¢
November	8.74	12.90¢
December	8.87	12.85¢
Average for 12 months, 1920	6.60	11.14¢
Average for 12 months, 1914	2.50	05.94¢

Haskins & Sells report the actual cost of coal and oil as follows:

	Coal per ton.	Oil per gallon.
1920, October, November & December	$8.84	12.93¢
1921, January and February	7.75	12.50¢
1921, 14 mos. ending February 28, 1921	6.82	11.43¢
Average cost stock on hand Feby. 28th	7.15	12.19¢

Under instructions from the Commission, its Rate Expert visited the principal coal and oil operators from whom utilities in this section, generally obtain coal and oil, with the view of ascertaining as accurately as possible prevailing contractual prices of coal and oil, such as is used in the manufacture of mixed gas, the terms and conditions under which contracts could be negotiated, probable future supplies, the probable trend of contract prices, etc. This investigation was made during the last half of March.

Based upon the information thus obtained, Mr. Price reached the conclusion that good gas coal could be laid down under contract in Atlanta for about $6.59 per ton and that gas oil could be delivered in Atlanta under contract at about 8.2 cents per gallon. These prices include war tax, and were in his opinion, obtainable during the last of March.

Our information is that there has been some reduction in the price of crude oil since this report.

The report of the Company for April shows a considerable reduction in manufacturing costs, doubtless the result of cheaper spot purchases of coal and oil, as it has no outstanding purchase contracts for coal or oil.

149 In its order of February 10th, the Commission included the following paragraph as a part thereof:

"The above schedule- of rates are made necessary by present prevailing cost and quality of coal and gas oil, and cost of labor. When these costs shall be materially reduced, these schedules of rates will be revised accordingly."

Our investigations show material reductions since February in the cost of coal and oil, and some reductions in the wages paid common

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labor, but none in the skilled labor employed by the Company. I is doubtful if there will be any further material reductions in th prices of coal and oil.

The reports of the Company for March and April show the com bined effects of the increases in rates and reductions in material and manufacturing costs.

According to the report of Messrs. Haskins & Sells, the Company had a considerable loss in 1920 between "gas sent out" and "ga metered" and paid for, the average loss for the year being abou 12½%. In our opinion, the loss should not have exceeded 10% for the year.

Allowing for a reasonable return on the Commission's Rate Bas of $4,533,635, and giving consideration to the effect of reduction in coal and oil on manufacturing costs occurring since our previou investigation, the Commission is of the opinion that the existing rates of the Company should, at this time, be reduced 25 cents pe thousand cubic feet, effective as to deliveries on and after June 1st

Monthly reports of operations will be continued. They will b carefully studied and should operating results materially change afte a reasonable period of trial under the revised rates prescribed
150 in the accompanying order, the Commission will of its own initiative make such further revision as to it seems reasonable and just.

The applications for a rehearing in this matter at this time, are denied.

151 Office of the

Railroad Commission of Georgia,

Atlanta.

File 13946.

In re Application of GEORGIA RAILWAY & POWER COMPANY for In creased Gas Rates.

May 28th, 1921.

Upon consideration of the record in the above stated application it is

Ordered: That the following schedule of rates shall be the maxi mum rates to be charged by the Georgia Railway & Power Company for gas metered on and after June 1st, 1921, and until further or dered by this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwise provided for.

For the first 10,000 feet	$1.75	per 1,000 cubic feet.
For the next 20,000 "	1.70	" " "
For all over 30,000 "	1.65	" " "

Discount: Subject to 10 cents per 1,000 cubic feet discount if bills are paid on or before the 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point and currounding territory.

Rate *I.* $1.85 per thousand cubic feet per month.

Discount: Subject to 10 cents per 1,000 cubic feet discount of bills are paid on or before the 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

The above schedules of rates are based upon manufacturing and distribution costs as of May 1st, and are subject to revision by the Commission at any time, and on its own initiative, should operating conditions and costs materially change.

The Company will continue, as heretofore, to furnish the Commission detailed monthly reports as to operations of its Gas Department.

By order of the Railroad Commission of Georgia:

(Signed) C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

152 EXHIBIT 10.

Before the Railroad Commission of Georgia.

File No. 13946.

In re Gas Rates of GEORGIA RAILWAY & POWER COMPANY in Atlanta and Vicinity.

Decided Dec. 30, 1921.

Order and Opinion of the Railroad Commission.

153 Chas. Murphy Candler, Chairman;
Paul B. Trammell, Vice-Chairman;
James A. Perry,
John T. Boifeuillet,
J. D. Price,
Commissioners.

Albert Collier, Secretary.
E. M. Price, Rate Expert.
James K. Hines, Special Attorney.

154 Railroad Commission of Georgia, Atlanta.

File No. 13946.

In re Gas Rates of THE GEORGIA RAILWAY AND POWER COMPANY in Atlanta and Vicinity.

December 30th, 1921.

Upon consideration of the record in the above stated matter, it is Ordered: That the following schedules of rates shall be the maximum rates to be charged by the Georgia Railway and Power Company, for gas metered on and after January 1st, 1922, and until the further order of this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwise provided for.

For the first 10,000 cubic feet..... $1.65 per 1,000 cubic feet
For the next 20,000 cubic feet..... 1.60 per 1,000 cubic feet
For all over 30,000 cubic feet..... 1.55 per 1,000 cubic feet

Discount: Subject to 10 cents per 1,000 cubic feet discount, if bills are paid on or before the 10th of the month.

Minimum Monthly Charge, $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point and surrounding territory.

Rate: $1.75 per 1,000 cubic feet per month.

Discount: Subject to 10 cents per 1,000 cubic feet discount, if bills are paid on or before the 10th of the month.

The Company will continue, as heretofore, to furnish the Commission detailed monthly reports as to operations of its Gas Department.

By order of the Railroad Commission of Georgia:

C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

155 Railroad Commission of Georgia, Atlanta.

File No. 13946.

In re Gas Rates of THE GEORGIA RAILWAY AND POWER COMPANY in Atlanta and Vicinity.

Before the Railroad Commission of Georgia.

December 30th, 1921.

By the COMMISSION, Commissioner Boifeuillet, favoring a lower valuation and lower rates, dissenting:

This inquiry was instituted by the Commission of its own motion and is as to the reasonableness and justness of the gas rates of the Georgia Railway and Power Company, effective in Atlanta and vicinity since June 1st, last.

In response to the Commission's Rule the Company has set up, in detailed inventories and appraisals, what it claims is the present fair value of its property used and useful in its gas business and upon which it claims it should be allowed a reasonable return.

It has also submitted under oath detailed operating reports setting up revenues and operating expenses, which it claims show results requiring increased rates rather than revision downward, in order that it may receive a reasonable return, and make good losses alleged to have been heretofore incurred under rates prescribed by the Commission.

We have found nothing to criticize in the strictly operating reports of the Company. Its gas business seems to have been economically and intelligently managed and the best results possible under present conditions, obtained.

We do not agree, as will later appear, to the rate or amount of the annual depreciation charge claimed and set up by the Company.

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"Fair Value" or Rate Base.

The basic question or fundamental problem in this and in all rat cases is the "fair value" of the property necessarily used and useful in the public service.

"We hold, however, that the basis of all calculations as to the rea sonableness of rates must be the fair value of the property being used for the convenience of the public." Smythe vs. Ames. 169 U. S. Supreme Ct. Reports. P. 466.

156 We know of no judicial authority anywhere which disputes the soundness of this principle. It is universally recognized. The citation of scores of authorities is not necessary.

When "Fair Value" Is to be Ascertained.

In the Consolidated Gas Company case, 212 U. S. Reports, page 19 the Supreme Court of the United States said:

"And we concur with the Court below in holding that the value o the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the Company is entitled to the benefit of such increase."

Concurring authorities in this principle are so numerous that citations are unnecessary.

How "Fair Value" Is to be Ascertained.

In Smythe vs. Ames, 169 U. S., the Supreme Court said:

"We hold, however, that the basis of all calculations as to the rea sonableness of rates, must be the fair value of the property being used for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with original cost of construction the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the Company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand what the public is entitled to demand is that no more be exacted from it * * * than the services rendered * * * are reasonably worth."

In the Minnesota Rate Case, 230 U. S., P. 434, the same high Court said:

"The ascertainment of value * * * is not controlled by arti-cial rules. It is not a matter of formulas, but there must be a rea-onable judgment having its basis in a proper consideration of all elevant facts."

While we can find no Georgia court deliverance suggesting meth-ods of ascertaining fair value, nor any statute in express lan-57 guage prescribing the method, yet to our minds strongly im-plied directions are given this Commission, in Code Section 664, as follows:

"The Railroad Commission of Georgia shall have authority to as-ertain the cost of construction on and the present value of properties n Georgia owned by said corporation or companies * * *."

We can conceive of no practical use to be made of such information xcept in prescribing rates and it appears to us that the plain im-lication is that in estimating present value for rate making purposes he cost of original construction or acquisiton should be given con-ideration.

There are scores of court decisions and commission reports discuss-g the methods of ascertaining fair value for rate making purposes. hey vary widely and one can find respectable authorities for sus-aining almost any view.

In 1914 the Massachusetts Public Service Commission under statu-ry direction, practically held that the deciding and controlling ctor in fixing value for rate making purposes, was the actual invest-ent. It seems to us that the Supreme Court of the United States d two years previously, in the Minnesota Rate Cases in terms settled is point, in the following deliverance:

"It is clear that in ascertaining the present value we are not limited the consideration of the amount of the actual investment. If that s been reckless or improvident, losses may be sustained which the mmunity does not underwrite. As the company may not be pro-ted in its actual investment, if the value of the property be plainly , so the making of a just return for the use of the property involves e recognition of its fair value if it be more than its cost. The prop-y is held in private ownership and it is that property, and not the iginal cost of it, of which the owner cannot be deprived without due ocess of law."

Another view, which we are frank to admit has had and is receiv-g approval in many court decisions, is that Reproduction cost new, accrued depreciation, or estimated replacement cost of the plant as tands at the time of the inquiry, based upon unit costs prevailing uch time, should be the controlling or conclusive factor in arriv-g at an estimate of present fair value of the physical plant.

The Company substantially contends for the application of this thod in this case.

Mindful of the approval of this method of valuation by a numb of Court authorities, we cannot concur in the belief that this is, at t time and under existing conditions a just and reasonable method estimating "fair value."

We do not mean to say that reproduction cost based upon pri current at the time of the inquiry should not receive consideration the valuator—they should—but only as one of the releva
158 factors.

In our judgment the true rule is laid down in Smythe Ames, supra, and in the Minnesota cases, where it was said value to be estimated through the exercise of a reasonable judgment havi its basis in a proper consideration of all relevant facts, "and are to given such weight as may be just and right in each case."

The human race is only recovering from an experience the like which the world never before endured, a world war—a world u heaval—an ec-nomic cataclysm. There are no stable measures value today.

We cannot give our approval to the proposition that it is eith just or reasonable to shut out from consideration in the valuation a plant every factor except that of reproduction as of today, usi unit costs of today, prevalent today because of conditions which ne existed before and doubtless never will again.

Replacement cost as of today capitalizes at the public expense th abnormal conditions, even now changing, and ignores conditions u der which this plant was constructed, before they became existent.

Mr. Luick, an engineer who impressed us as capable and hone assumes conditions, facts and expenditures which were not and cou not have been cost factors in the construction of this plant, to impo which on the public at this time, under a suppositions replacem theory, is not reasonable.

The exercise of a reasonable judgment as to present "fair valu requires however, some consideration of such facts as well as of or inal construction cost.

We do not believe that "present fair value," is synonomous wi "present replacement cost," particularly under abnormal or cond tions in flux.

Our own Supreme Court, in so far as we know, has never ruled this particular question. Until it does, and so holds, we feel co strained to follow what appears to us a plain common sense exercise judgment with consideration of all factors going to show value.

In our judgment the "fair value" of this gas plant at this time f rate making purposes may be reasonably approximated by consider tion, in the absence of any evidence as to original or historical co of replacement cost under normal conditions as of January 1st, 19 immediately preceding price disturbances by war, plus the actu construction cost of additions, extensions and betterments since th date. In so doing there is sufficient recognition of conditions exi ing during this period and now.

The "Fair Value" of the Property Thus Estimated.

The application of this method in this case is not difficult because of the fact that there is in evidence an appraisal made as of January 1st, 1914, by the well and widely known engineering firm of Parsons, Klapp, Brinkerhoff and Douglas for Drexel and Company, Bankers, financing for the Company, then and now.

159 The conditions under which this appraisal was made, that is by the use of normal unit costs at a time when there were no violent price disturbances by a firm of such high character, under employmment by Bankers lending large sums on the property, appear to give it especial value.

The reproduction or replacement cost new of the physical properties thus made as of January 1st, 1914, was $3,897,992.

The record shows that from January 1st, 1914, to this time the Company has actually expended in new construction, additions, extensions and betterments chargeable to capital account the sum of $4,008,222, plus the book cost of the Decatur gas property, $78,322, making a total of $4,984,536, undepreciated. In the present case Mr. Brinkerhoff estimated the percentage condition of the physical properties as 88.6% on September 30th, 1921, applying which leaves $4,416,299 for these properties, as of December, 1921.

Going Concern Value.

A utility plant with an established business attached is more valuable than one without business and following our precedents in such cases as this, we are of the opinion that ten per cent of the value of the naked physical properties is a fair allowance for what is known as "going concern value."

Working Capital.

In 1914 Mr. Brinkerhoff estimated that $195,163 was necessary as working capital in the conduct of the Company's business. A gas plant must carry certain materials in stock and must also carry many of its customer's accounts for periods of thirty or forty days, and to meet these necessities must always have invested in materials and in outstanding accounts a considerable cash sum. This Commission has generally estima-ed this necessary sum as approximately ten per cent of one year's gross revenue.

Under prevailing conditions and for a gas utility we are of the opinion that this is at this time somewhat under estimated. Using the same relative figures as did Mr. Brinkerhoff in 1914, we believe an allowance of $266,677 for working capital is adequate.

Adding these sums, $441,629 to cover added value in the physical plant as a "going concern," and $266,677 for working capital, the total estimated sum for the plant and working capital at this time is $5,124,605.

Allowing for additional appreciation in the Decatur properties, i land in Atlanta, and other appreciable items, we are of the opinio that the "fair value" as of December 30th, 1921, of the gas properti of the Georgia Railway & Power Company being used in the publi service, including working capital, is $5,250,000, and that this sum should be used for the present as a Rate base.

The Commission has previously used as a rate base the sum o $4,533,635, estimated, however, as a minimum value as of Decem ber 31st, 1920. Since this estimate was made, under orders of thi Commission, the Company has spent $397,443 in additions and ex tensions.

160 For the first time the Commission has had submitted to i a detailed inventory and appraisals and is therefore in position to estimate values more accurately than heretofore.

Franchise Values.

The Company has contended that there should be included in it rate base large values for its franchises, the original of which wa granted by the State Legislature, without charge. This claim w have not allowed in our estimates.

These franchises, it is true, are taxable and are taxed as property but it is also true that the taxes paid thereon are repaid to the Com pany in the rates it charges the public.

The public having granted these franchises in order that it migh be served should not be required to pay a return on them as Company property in addition to returning to the Company in rates every dollar of taxes it pays. The public taxes the Company; the Com pany charges the tax back to the public and the public repays it in rates.

It seems to us that the process should stop at this point.

Operating Results under Existing Rates.

Having ascertained what in our opinion is the present fair valu of the property, it is now in order to ascertain operating results unde the existing rates.

The maximum net base rate now in effect is $1.65 per thousan cubic feet.

This rate was made effective June 1st last, but inasmuch as th Company has in use several thousand prepay meters which have t be readjusted to each change in rates and as these changes require time in making, many of them operated at the rate in effect prior t June 1st.

Again the regular charge meters are read all through a calenda month, while bills are sent out only as of the first of the month. Because of these two conditions operating results for June, nominally under the rate effective June 1st, do not actually indicate Jun operating results on the $1.65 rate. While six months have elapse since the $1.65 rate became nominally effective and while we hav studied and analyzed operating results for these six months, ou

conclusions have been based upon operating results for five months, July to November inclusive, as more nearly and accurately indicating actual earnings under the $1.65 rate. It should be noted however, that within this latter period practically three summer or light consumption months, July, August and September, are included, against two winter or heavy consumption months, October and November. As overhead charges, such as taxes, office expenses, insurance, depreciation, etc., continue practically constant,
161 whether sales are light or heavy, a study of the five months mentioned indicates somewhat smaller net returns than if the study had been, say, of six months, July-December, inclusive.

In our study of the operating results we have revised the sums reported by the Company as charged to operating expenses on account of taxes and current depreciation. The original tax charges included items of $2,152 Federal income Tax for 1920 and $56,704, Federal Income Tax for 1921.

The first of these items, $2,152, while paid in 1921, was a charge against 1920 and should not have been charged to 1921. We have eliminated it from 1921 operating expenses. The second item, $56,704, was an estimate of 1921 Federal Income Tax based upon the percentage rate being discussed by Congress at the time of the estimate, 12½%.

The tax as finally fixed by Congress was only 10% and hence the estimate of $56,704 for 1921 was 20% high. We have therefore deducted $11,340 from the original estimate for 1921.

Current Depreciation.

The Company claims that it should be allowed a composite percentage of 2½% annually, on the fair value of its physical properties, to cover depreciation growing out of constant use and not provided for or met in ordinary repairs and maintenances.

We know of no authority anywhere which denies a proper allowance for current depreciation. But in our opinion a composite percentage of 2% on the undepreciated fair value of the physical properties is an ample allowance for a gas plant in Atlanta. We base this conclusion very largely on the testimony of Mr. Luick, for the Company, who went into the subject quite at length, and while he allows 2½%, we believe this to be an over-estimate, according to his detailed explanation of physical facts and conditions in Atlanta and in this plant.

Using 2% as a composite rate and $4,984,536 as the undepreciated value of the Company's physical properties, we have made an allowance for 1921 of $99,690, for current depreciation.

Revised as indicated, accepting as correct all other items reported by the Company, we find results as follows, for 5 months, July-November inclusive, under $1.65 rate.

1921.	Sales, cubic feet.	Gross revenue.	Op. exp., taxes, & depreciation.
July	91,547,500	$156,710.49	$122,426.93
August	100,358,600	166,570.65	129,737.29
September	101,812,300	169,940.49	124,686.29
October	103,131,900	173,987.46	134,244.26
November	112,157,500	186,172.46	138,474.79
Total 5 months ...	509,007,800	$853,381.55	$649,569.56

162 Net earnings 5 Mos.—$203,811.99 equivalent to 9.31 per cent per annum on the rate base of $5,250,000.

As already stated, we are of the opinion that operations for a 6 months' period ending December 31st, thus including one more heavy consumption month so as to equalize with three light as against only two heavy consuming months in the above 5 months' period, would show more favorable net earnings.

In our opinion a reduction of 10 cents per thousand cubic feet can be justly made in the Company's existing scale of rates, and an order to this effect will be entered. We have given careful consideration to operating costs, especially as affected by prevailing wage scales and the prices of coal and oil and do not believe that these permit of any larger reduction at this time. A reduction of 10 cents per thousand cubic feet does not seen large as applied to the individual consumer's account, but on total sales of 1,300,000,000 cubic feet per annum it means a reduction in the Company's gross revenue of $130,000.00.

Amortization of Alleged Losses in the Past.

The Company claims that in the fall of 1920 and the first part of 1921 it suffered actual out of pocket losses in its gas department under the rates prescribed by the Commission, and that for some time prior thereto the rates prescribed by the Commission, failed by a large sum to give it an 8% return, and that now rates should be prescribed to provide not only a present 8% return, but also, through a course of years, to reimburse it for losses under a return of 8% made in the past several years. We do not believe the Commission has the legal right in prescribing rates for the future to prescribe such as will also provide for the insufficiency of rates in the past—in substance to make them retroactive.

If the Commission, in fact has this power, the query would arise why amortize losses for the past four or five years and not go back to 1907 when the Commission first exercised its rate making power as to gas companies and see if earnings between 1907 and 1917 were not in excess of an 8% return. We understand it to be duty of the Commission, as far as it can foresee, to provide rates which will produce a reasonable return, but we do not understand that it or its creator, the State, guarantees a reasonable return for every day and under all conditions.

Comparisons of Rates in Atlanta and Elsewhere.

There have been placed in the record numerous comparisons of gas rates in Atlanta with rates in other cities, far and near.

We attach little value to such comparisons unless accompanied by full information as to the conditions prevailing in other cities.

163 The measure of a just and reasonable rate for a given utility in one city cannot be determined by the rates in effect for another utility in another city.

The kind of gas sold, the standard required; the materials from which made and the sources from which obtained, the density of traffic, the character of the plant, the methods of operation, the kind of management, and other considerations all enter into cost and therefore into rate fixation. Just to file a lot of rate scales with the Commission, without other facts or information to demonstrate their value, is of little assistance.

Capitalization of the Property.

In reaching our conclusions we have given absolutely no consideration to the capitalization outstanding on this property. It is wholly immaterial, and has been entirely ignored.

We have tried to ascertain the "fair value" of the property actually in use at this time, whether this property was paid for out of money contributed by its owners directly from their pockets or paid for out of earnings of the property, in the past, not withdrawn by the owners, as it could have been legally, but put back into the property, is immaterial. As we have already stated in discussing amortization of losses, we are prescribing rates for the present and for the future,—the past is gone.

164 *Temporary Restraining Order.*

Whereas, the hearing provided for in the order granted in the above stated case on December 31, 1921, cannot be had on this day because of the fact that it has not been practicable to secure the presence of two other Judges as required by law;

It is therefore, considered, ordered and adjudged that the preliminary hearing in said case be and the same is continued until 10 o'clock A. M., Friday January 13, 1922, unless the presence of the requisite number of Judges can be secured prior to said date, and if such presence can be earlier secured, then said hearing shall be had upon notice given to both parties.

It is further considered, ordered and adjudged that the restraining order granted in said case on December 31, 1921, be and the same is retained and continued until January 13, 1922.

And it is further ordered that the complainants herein execute and deliver a bond in the sum of Seventy-Five Hundred Dollars ($7,500.00), to be approved by the Judge of this Court, conditioned upon the payment of such costs and damages as may be incurred or

suffered by any party who may be found to have been wrongfully enjoined or restrained by and in said cause.

This January 7, 1922.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Jan. 7, 1922.
O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

165 *Temporary Restraining Order.*

It appearing to the Court that the restraining order heretofore granted in said case was only extended to January 13, 1922, whereas it was the purpose to continue said restraining order until a hearing should be had, as is provided by the statute; and whereas the case may not be finally determined on the 13th of January, 1922, it is considered, ordered and adjudged, that said restraining order be continued upon the same terms and conditions, under the same bond, until the 23rd of January, 1922, unless the same is sooner dissolved by the court.

January 13th, 1922.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Jan. 13, 1922.
O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

166 *Temporary Restraining Order.*

It appearing to the Court that the restraining order heretofore granted in the above stated case was only extended to January 23, 1922, and whereas it is the purpose to continue said restraining order until the decision is rendered in said case; and whereas, said decision in said case has not been finally rendered on this date; it is considered, ordered and adjudged that the restraining order be continued, on the same terms and under the same bond, until Monday, January 30, 1922, unless same is sooner terminated by order of the Court.

This January 23, 1922.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Jan. 23, 1922.
O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

167 *Bond on Temporary Restraining Order.*

STATE OF GEORGIA,
Fulton County:

Know all men by these presents, that whereas, on the 31st day of December 1921, the Honorable Samuel H. Sibley, Judge of said Court, issued a restraining order in the above entitled cause, and on January 7th, 1922, issued a further order continuing said restraining order in which it is ordered "that the complainants herein execute and deliver a bond in the sum of Seventy Five Hundred ($7,500.00) Dollars, to be approved by the Court, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by and in said cause";

Now, therefore, Georgia Railway & Power Company and Atlanta Gas Light Company as principals, and National Surety Company of New York, as security, are truly, justly and firmly bound unto the United States of America in the sum of Seventy Five Hundred ($7,500.00) Dollars for the payment whereof well and truly to be made the said Georgia Railway & Power Company and the said Atlanta Gas Light Company, principals, and the said National Surety Company of New York, security, bind themselves, their successors and assigns firmly by *the* presents.

The condition of the above and foregoing bond is such that if the said Georgia Railway & Power Company and the Atlanta Gas Light Company shall pay such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by and in said cause this bond shall be wholly void, otherwise of full force and effect.

168 In witness whereof, the said Georgia Railway & Power Company and the said Atlanta Gas Light Company as principals and the said National Surety Company of New York, as security have caused these presents to be executed and their seal affixed thereto by their duly authorized officer or officers.

This January 7th, 1922.

GEORGIA RAILWAY & POWER CO., [Corporate Seal.]
By G. N. BRINE,
Vice President.
ATLANTA GAS LIGHT CO., [Corporate Seal.]
By G. N. BRINE,
President.
NATIONAL SURETY COMPANY,
By HAROLD BLOODWORTH,
Resident Vice-President.

Attest:
ETHEL WALKER, [Corporate Seal.]
Resident Assistant Secretary.
Approved:
SAM'L H. SIBLEY,
Judge United States District Court
for the Northern District of Georgia.

Filed in Clerk's Office Jan. 7, 1922.
O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

169 GEORGIA RAILWAY & POWER COMPANY et al.

vs.

RAILROAD COMMISSION OF GEORGIA et al.

Brief of the Evidence.

Introduced on Hearing on Interlocutory Injunction Seeking to Restrain Enforcement of Commission's Order of Dec. 30, 1921.

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171 Complainant introduced the answer which had been filed to the rule Nisi issued by the Railroad Commission which was as follows:

In re Gas Rates of GEORGIA RAILWAY AND POWER COMPANY in Atlanta and Vicinity.

Georgia Railway & Power Company, in responding to the rule Nisi issued by the Railroad Commission of Georgia on September 20th, 1921, to show cause why the Commission should not revise its gas rates now in effect in Atlanta and vicinity, for answer to such Rule shows as follows:

1. That the rates for gas allowed to be charged and now being charged by this respondent were fixed by this Commission by order dated May 28, 1921, effective from and after June 1, 1921. That these rates were a reduction from rates then being charged, and which had been charged for a period of only about three months. The rates now in effect were fixed by the Commission without a hearing, without notice to this respondent that a reduction in its rates for gas would be considered by the Commission, and without giving respondent any opportunity to be heard.

That the Rule Nisi in the pending hearing was issued by the Commission on its own initiative and without any formal complaint having been filed by any users of the gas service.

That at the date such Rule Nisi was issued the said rates had been in practical effect for only about two months, and the statements of operations filed with the Commission for the months since the present rate went into effect included earnings for gas supplied during a previous period at a higher rate and the operation costs of furnishing which were not included in the expenses of the months to which the earnings were attributed.

That there has been too short a period of operation under these rates to justify even a consideration of further reductions in them.

2. That under the law this respondent is entitled, as a matter of right, to be allowed to charge rates for its gas service which will give

it an opportunity to earn a reasonable rate of return upon
172 the fair present value of its property used and useful in
furnishing the service. This Commission has never fixed
and has not undertaken to fix a fair value of the property of re-
spondent used and useful in the service of manufacturing and sup-
plying gas. On the contrary, the only value which the Commission
has considered or attempted to fix on which to base the fixing of rate
for gas allowed to be charged by this respondent has been, as ex-
pressed in its own words, "a very conservative estimate of the mini-
mum value of the property of this Company in the public use," i
being such a value as in the words of the Commission, when fixing
it, "the Company may complain at our use of a minimum valu
rather than the fair value, but certainly the public cannot."

Respondent respectfully shows that in order to determine whethe
rates fixed or to be fixed are just and reasonable it is necessary
consider whether they will yield a reasonable return upon the fa
value of the property being used in the public service. That
order to fix just and reasonable rates it is necessary to fix the prese
fair value of the property, and as stated by this Commission,
spondent has the right to complain at the use of a minimum val
or of the use of any value less than the fair present value of
property being used in the public service, and respondent does co
plain against such use, and earnestly urges upon this Commissi
that in fixing rates to be charged by it the fair value of all of
property devoted to the public service of furnishing gas should
fixed and the rates should be such as to permit it to earn a reas
able return on such fair value. That to fix such value at anythi
less than its fair value at the time of the fixing of the rates, a
basing rates on such lower values, is to confiscate this respondent
property and to deprive it of its property without due process of l
and to prevent it from carrying out its duty of supplying gas servi

3. That the said rates for gas now in effect and heretofore fix
by this Commission have not yielded, and do not yield, and do n
permit this respondent to earn a reasonable rate of return on t
value of its property used and useful in the public service, and shou
not be reduced.

173 4. That during the years 1917, 1918, 1919 and 19
the rates fixed by this Commission for gas service by th
respondent were so low that this respondent was forced to suffer
loss in furnishing such service of more than One Million Dolla
that this respondent was diligent in appealing to this Commission
fix rates which would have obviated this loss. Under the rules a
orders of this Commission this respondent was not permitted
charge just and reasonable rates, but was forced to supply gas se
ice at inadequate rates and to sustain a loss during the said fo
years of more than One Million Dollars. The public using the g
service of respondent at such inadequate rates received the bene
of an amount equal to the loss sustained by respondent. The p
sons receiving such benefit are substantially the same persons

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ing the gas service supplied by respondent. In law and good nscience respondent is entitled to earn back this loss so suffered by , and the rates permitted to be charged by it for its gas service ould not only yield it a reasonable return on the fair value of its roperty used in furnishing such service, but should yield an addi- onal sum sufficient to allow these losses to be amortized over a rea- nable period of time in the future.

Value.

5. Respondent has had a careful inventory and appraisal made f the fixed physical property, consisting of land, transmission and istribution systems, buildings and miscellaneous structures, plant quipment and general equipment actually and necessarily used by in the business of manufacturing and supplying gas to the public n the territory served by it. This appraisal was made as of Sep- mber 30, 1921, and shows the cost of reproducing new such fixed hysical property, the condition of such physical property and the st of reproduction new less depreciation of such fixed physical roperty. This inventory and appraisal includes only the fixed hysical property actually owned and in use on September 30th, 921, and includes the fixed physical property owned by the Atlanta as Light Company, and leased to this respondent, and the fixed hysical property owned by this respondent and used in supplying gas in the town of Decatur and vicinity.

74 The value of such fixed physical property owned and in use on September 30th, 1921, in its condition on such date, e at least the sum of $6,100,750.

Attached hereto, marked Exhibit No. 1, and hereby referred to d made a part hereof, is a statement of the items of fixed physical roperty owned by the Atlanta Gas Light Company and leased to is respondent, and owned by this respondent, and both being used the manufacture and supply of gas by this respondent on Sept. 0th, 1921, and now being used, with the value of such property w as of September 30th, 1921, and the value of such property w less depreciation as of Sept. 30th, 1921.

6. In addition to the fixed physical properties there are other hysical properties required and necessarily employed in the furnish- g of gas service. These additional physical properties are some- mes called Working Capital. They consist of stocks of coal and and of general supplies which must be kept constantly on hand order to assure a continuous gas service. Likewise, there is con- antly kept on hand a stock of residuals, the value of which has ready been credited against operating expenses, but which cannot sold and disposed of immediately. In addition to the stocks of al, oil and residuals required to be constantly kept on hand, there a large amount of money at all times invested in labor and ma- rial in gas which has been made and used, but not yet paid for by e customers, and in the gas on hand in the mains and holders.

It is impossible to read all the customers' meters on the last day the month. The meters are being read continuously, but are

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billed at the first of the month and payable on the 10th of the mont
For illustration, a customer's meter may be read on the 2nd of Ju
and then again on the 2nd of August. Bill for this gas consum
is rendered on the first of September, collected around the 10th
12th of September, or approximately one and one-half months aft
the money is expended in supplying the service before the reven
is collected. There is at least the equivalent of one and one h
months' operating expenses constantly tied up and invest
175 in the business in addition to the stocks of coal, oil and su
plies.

Working capital required and actually invested in the busines
actual physical property, owned by the Company and employed
it in the furnishing of service. It is not an intangible value or
matter of allowance, or a matter of estimate. It is just as much e
ployed in the business and just as necessary to the conduct of
business as is the fixed physical property or plant and gas mains.

Attached hereto, marked Exhibit No. 2, and hereby referred
and made a part hereof, is a statement of the actual working cap
employed in the business of furnishing gas by this respondent.
shows that the actual working capital so employed by this respo
ent during the eight months ended August 31, 1921, amounted
$425,000.

Mr. H. E. Riggs, who was employed by this Commission to va
and report upon the property and business of this respondent, a
whose report was made to this Commission in about April, 192
made a thorough examination of the records and properties of t
company, examined the record of its stores and supplies on han
at the end of each year for the six years 1915-1920, both inclusi
and separately the stocks of coal and oil on hand for each month
the years 1915-1920. After such thorough examination Mr. Ri
reported the working capital employed and necessary to be emplo
in the business of furnishing gas by this respondent to be $414,0

To the value of the fixed physical property should, therefore,
added the sum of $425,000 to cover working capital actually e
ployed and invested and necessarily employed and invested in
business of furnishing gas service.

7. In addition to the items of physical property, consisting
fixed physical property and working capital, there is other prope
owned by respondent and used by it, and necessarily used by it
the furnishing of gas service. Among these items is that sometim
called "Going-Value", or "Going-Concern" value or the value
attaching the business, perfecting the organization, etc. Respon
states that the Going-Concern Value of its Gas Department is
less than $1,000,000. This Commission, however, has been a
ing for the past several years for this item of value an amount eq
to 10% of the value of the fixed physical property employed in
business. Respondent respectfully alleges that while
176 allowance might be sufficient for some businesses, it is gr
inadequate for the property and business of respond
Gas Department, which has been built up over a period of some
years, and that such going concern value is more than $1,000,000

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There are other items of value attached to the property of re-
ondent used in the supplying of gas. Respondent possesses a
luable franchise which under the laws of Georgia is classified as
operty, which is transferable, which is taxed by the State of
eorgia and its various political sub-divisions as property, and which
esesses all the other attributes of property. It is employed in the
siness of supplying gas service, and it is necessary to the per-
rmance of such business. The franchise of respondent in its gas
siness was granted by a special act of the Legislature. It cannot
duplicated. It is of undoubted value. It is assessed by the State
Georgia for taxation at a valuation of $300,000, which under the
les applied for valuing property for taxation is only a percentage
the actual value of such franchise. Such franchise under the
w is entitled to be valued as a part of the property owned by re-
ondent upon which it is entitled to a return on the business con-
cted by it.

9. In order to secure the money necessary to construct and pro-
de the facilities and establish the business of manufacturing and
pplying gas such as is owned and conducted by respondent, it is
cessary to secure the capital required to accomplish these purposes.
his capital must be obtained from the investing public generally.
addition to the return which must be paid to the investor, there
a considerable cost and expense involved in obtaining the capital
om the investor. It is necessary to pay a brokerage or commission
bankers or brokers, and to pay the necessary expenses of printing
d engraving and advertising, and counsel fees, and other inci-
ntal expenses necessarily connected with and incident to the ob-
ining of the necessary capital from the investing public.
The cost of financing or obtaining the necessary capital for the
s Department of respondent is at least the sum of $567,457, and
h cost is a part of the value of the property when constructed and
obtained, and doing business, and should be added to the
other items of value hereinbefore enumerated in arriving at
the aggregate value of the whole property used and useful in
rforming the gas service.

10. Attached hereto is a statement marked Exhibit No. 3, and
reby referred to and made a part hereof, showing the value of the
d physical properties, the working capital and an allowance for
ng Concern Value of the properties of respondent used and useful
the supplying of gas and being the properties possessed on Sept.
h, 1921, with a value as of Sept. 30th, 1921, and excluding any
ue for the franchise or for the cost of financing the enterprise.
e value of the property used and usful in the supplying of gas
the basis above stated, is the sum of at least $7,525,750. Re-
ndent alleges that the actual value of the property used by it in
supplying of gas is much more than $7,525,750, and that such
ue is at least the sum of $8,000,000.

11. Attached hereto, marked Exhibit No. 4, and hereby referred
nd made a part hereof, is a statement showing the actual amount

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of money expended by this respondent in its Gas Department in co
structing and acquiring additional fixed physical property to
plant and equipment for each of the years 1913 to 1920, both i
clusive, and for the eight months expiring August 31, 1921.

12. Attached hereto marked Exhibit 5, and hereby referred to an
made a part hereof, is a statement showing in summary and in deta
the amounts actually expended by this respondent in constructi
and acquiring additions and extensions to its fixed physical proper
during the eight*y* months ending August 31, 1921, and an estima
of the amounts which will actually be expended by this respondent
on such accounts for work already undertaken during the remainin
four months of the year 1921.

The actual expenditures for such construction and equipment du
ing the first eight months of 1921 amount to $248,217.27. The a
ditional amounts which it is estimated will be expended on n
construction and additional equipment during the remaining fo
months of the year 1921 is $149,216.14. The total amount
pended and to be expended for new construction and ad
178 tional equipment to the physical plants and property of
spondent during the year 1921 is the sum of $397,433.41.

Return on Values from Existing Rates.

13. The Rates now in effect were made effective by this Commi
sion from and after June 1st, 1921. The maximum net rate so fix
was $1.65, with a schedule of reduced rates for larger consumpti
An examination of the history of the earnings of this Company f
the last ten years will disclose that the company's average rate w
be approximately 97% of the maximum net rate. A table show
the relation of the maximum net rates to the average rates recei
by this company during the years 1912 to 1920, both inclusi
and the months of January and February, 1921, is contained in t
report of Mr. Riggs hereinbefore referred to, and reference to s
table and the conclusion of Mr. Riggs thereon is hereby prayed.

As heretofore explained in this answer, the operating cost sho
on the Company's monthly statements of earnings and expenses
for the calender month named. The revenues shown on the s
statement are, however, for the meter reading period which does
coincide with the calender month; although in any one month
expenses shown are not the expenses incurred in making and
tributing the gas yielding the revenue attributed to that calen
month. Likewise, when rates for gas are changed it is necessary
change the gears in the prepay meters, which means that the old
must continue for a time after its supposed effective date until
gears in the particular prepay meter can be changed.

Statements have heretofore been filed with this Commission
respondent showing the Revenues and Expenses for each of
months June, July, August and September, 1921. These statem
unadjusted, do not reflect the revenue actually earned during s
calender months at the rate fixed by the Commission. To arriv
the correct revenue for this period yielded by the rates fixed by

ommission, it is necessary to calculate the revenue on the basis of e gas sold during the period at the average rate of 97% of the aximum net rate of $1.65, making the average rate which should be used $1.6005.

79 Attached hereto is a statement marked Exhibit No. 9, which exhibit is hereby referred to and made a part hereof. This atement shows the earnings and operating expenses for twelve onths on the basis of the earnings and operating expenses for the onths of June, July, August and September, 1921. Adjusting e actual earnings for such months to what they would have been the average rate of $1.6005, the net earnings over and above erating expenses, taxes and depreciation for the twelve months n this basis, as shown by this statement, are $292,136.02.

Not all of these net earnings are available for return on the value f the property. Some of these earnings should first be applied to nortizing the loss suffered by this respondent during the years 1917, 918, 1919, and 1920, under the inadequate rates fixed by this ommission at which this respondent was forced to supply gas.

However, without reference to an allowance for the purpose of nortizing this loss, and applying these net earnings as if they were ailable in dull for a return on the value of the property, this return ould be at the rate of 3.88% per annum on a valuation of $7,-25,750, being the valuation stated in this answer Exhibit No. 3 ereof.

14. Attached hereto, marked Exhibit No. 10, is a statement of the evenues, Expenses and Net Earnings of the Gas Department of spondent for the twelve months ending September 30, 1921. The et earnings above operating expenses, taxes and depreciation for ch period are $217,065.49. Applying these net earnings as if ey were available in full for a return on the value of the prop-ty, this return would be at the rate of 2.88% per annum.

Losses Suffered from Inadequate Rates.

15. Attached hereto, marked Exhibit No. 12, is a statement show-g the losses sustained by respondent in its Gas Department during e years 1917, 1918, 1919 and 1920. This statement is made up by king the Commission's minimum valuation as of Jany. 1, 1918, ferred to in its order of August 14, 1918, adjusted for each year by ding the amounts actually expended for new construction during such year, and applying to such value the net earnings of the 0 Gas Department of respondent for such year after deducting from gross revenues annual operating expenses, taxes, and the te of depreciation as fixed by this Commission.

This commission has repeatedly held that respondent, during the nergency period of the war, was entitled to earn at least 8% on at st this minimum value fixed by the Commission, and that it ought be permitted to charge rates which would allow it to earn at least is rate of return. The statement shows that respondent suffered oss on this basis for the four years 1917 to 1920 of $1,025,514.38, d that for the year 1920, under the rates fixed by this Commission,

respondent not only did not earn any return whatever on any valu whatever from its Gas Department, but that it actually failed unde the rates it was compelled to charge to earn sufficient to pay i operating expenses and taxes and provide for the renewal of its pro erty worn out in the service. That in addition to furnishing g service and devoting its property to such service without any retur whatever, it actually suffered an out-of-pocket loss during the ye 1920 the sum of $60,827.88.

Mr. H. E. Riggs, in his report made upon the employment of thi Commission, likewise examined into the past earnings of respondent Gas Department and reported, among other things, the earning applicable to a return on investment for the years 1917 to 1920, in clusive. He based these figures upon the minimum valuation fixe by the Commission on August 14, 1918, of respondent's gas propert and allowed for the year 1917 as a fair return 7½% on such valu tion, and for each of the years 1918, 1919, and 1920 a return of 8 on such minimum valuation.

Attached hereto, marked Exhibit No. 13, is an extract from M Riggs' report showing the results on this basis for the years 1917 1920, both inclusive. This statement of Mr. Riggs shows that th respondent in its Gas Department suffered a loss during the yea 1917 to 1920, both inclusive, of $972,804. That it suffered a lo in each one of the years 1917, 1918, 1919 and 1920, and that in th year 1920 it not only earned no return whatever on any valuation its gas property, but that in supplying gas service it not onl

181 devoted its property to the service without any return, bu actually sustained an out-of-pocket loss in order to supply th service, amounting to $57,494 more than the revenues it received.

Respondent has not the power to itself fix these rates charged it for gas service, but is compelled to supply service at the rates fix by the State of Georgia, acting through this Honorable Commissio Inasmuch as respondent is never permitted to make any extra pro from the supplying of gas it is entitled to be permitted to earn a all times a reasonable rate of return on the value of its proper devoted to the service.

Following the declaration of war by the United States in 191 the costs of labor and materials entering into the making and suppl ing of gas were materially increased. So much so that the rates th being charged for gas were not sufficient to pay the cost of maki and supplying the gas. While respondent anticipated that the costs would so increase as to make the rates then being charged f gas inadequate, it was familiar with the practice of this Comm sion to require that the public utility company should throu actual experience show a history of losses under increased prices f materials and labor before and application to adjust the rates t meet these costs would be entertained by the Commission.

In the order of the Commission of March 10, 1921, declining t reopen the previous order of Feby. 10th, 1921, fixing gas rates fo this respondent, this Commission declared this policy as follows:

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"The majority of the Commission does not believe that they (gas rates) can be based upon a guess, or a theory, or a hope as to what they (conditions) will be six months or a year in the future."

The same principle was announced by the Chairman of this Commission in the Southern Bell Telephone case on February 4th, 1921, as follows:

"The argument for the increased revenue asked is to an extent based upon the estimates of increased wages and other expenses in 1921. Until these increases are actually made I question the policy of anticipating them by increased rates."

Likewise, the same policy was announced by Commissioner Boifeuillet in his opinion in the same case, as follows:

182 "I don't believe that an increase of rates should be based upon an anticipated increase in expenses during the current year."

Therefore, while suffering a loss on the rates then authorized by the Commission, this Company had to continue to suffer such loss before it could, in accordance with the practices and policies of this Commission, file an application for relief in the nature of increased rates to meet such increased costs.

It did file such an application on April 16th, 1918, which was granted, in part, on August 14th, 1918, and became applicable on or about November 1, 1918.

It filed a similar application for relief on April 21, 1920, which was granted, in part, on September 22n-, 1920, effective Oct. 1, 1920.

It filed a still further application for relief on November 28, 1920, which was granted, in part, on Feby. 10th, 1921, and became effective about March 1, 1921.

The relief granted by this last order of Feby. 10th, 1921, was in large part withdrawn by order of the Commission on its own initiative, without notice and without hearing on May 28, 1921, reducing the rates to become effective June 1st, 1921.

It has been held by numerous Commissions that a utility should be provided a return to care for deficits suffered by reason of the failure of the Commission to authorize adequate rates. This has been particularly true of the Public Utility Commissions of Indiana, Tennessee, and Michigan, as well as other States.

16. Under the rates fixed by this Commission this respondent suffered a loss of at least $1,025,514.38. The users of the gas service of respondent were saved an equal amount of money; that is to say, they did not pay the cost of the service by this amount of money. The persons so receiving such benefits were substantially the same persons now using the gas service supplied by respondent. On account of this loss respondent has accumulated a deficit and a very large floating indebtedness. The revenues received by it

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now and in the future must be applied toward the payment
183 of this indebtedness and making good this deficit so suffered and are not available as a return on the failure of the property now being used in the gas service.

As stated by the Michigan Public Utility Commission,

"This money having been paid out by the company for the benefit of the rate payers, the company is entitled to receive it back either by having it capitalized so as to receive in perpetuity an adequate rate thereon, or by having it amortized over a period which ought not to exceed five years, and paid off and returned to the company. If these operating losses are capitalized as contended for by the company, the rate-paying public will continue to pay an adequate return thereon, although they represent no plant investment. If they are amortized over a period of five years and paid by the rate-paying public, then those who have had the benefit of the company's money will be compelled to return it in additional rates, and eventually the capital of the company will be maintained upon a substantial parity with plant investment."

Inasmuch as this loss was sustained over a period of four years it would appear reasonable that it should be amortized and paid back through the rates over a similar period of four years.

Amortizing this loss over a period of four years would make an annual charge against earnings of $256,378, or a monthly charge of $21,365.

If the loss should be taken to be the loss as stated by Mr. Riggs of $972,804, this amount should be amortized over a period of four years and would result in a charge against earnings of $243,201 per year, or $20,267 per month.

In considering whether the existing rates for gas should be revised, allowance should be made so that the rates will permit respondent to earn not only a reasonable rate of return on the fair value of its property being devoted to the service, but a sum in addition sufficient to pay back these losses. This should be done not only as a matter of right to this respondent, but in the interest of the maintenance of proper gas service, and enabling this respondent to meet the demands made on it by the public for increasing and improving the service.

184 18. As statistical information illustrating the business of respondent's gas department, the earnings thereof over a period of years, the increasing cost of supplying gas, the changes in the cost of materials and labor entering into the manufacturing and supply of gas, and as bearing on the question as to whether respondent's gas rates should be revised, respondent attaches hereto various statements as exhibits which are hereby referred to and make a part hereof, namely:

Exhibit No. 14 is a statement of the assets and liabilities as of Sept. 30th, 1921, of the Atlanta Gas Light Company, leased to respondent. It would appear from this statement that the historical or book cost of the fixed physical properties of the Atlanta Gas Light

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Company on Sept. 30th, 1921, was $4,800,564.69. The book value or historical cost of the fixed physical property used in the gas business and owned by respondent, not leased from the Atlanta Gas Light Company, is $78,322.69. The book or historical actual cost of the fixed physical properties used and useful by respondent in the gas service would, therefore, be $4,878,887.38. Adding to the fixed physical property the cost of so-called working capital actually employed in the business of $425,000, and adding $1,000,000, being going concern value, or the value of the attached business, etc., makes the historical or book cost of the property of respondent used and useful in the business of furnishing gas service, the sum of $6,303,887.38.

Exhibit No. 15 is a statement of the assets and liabilities of the Georgia Railway & Power Company as of September 30th, 1921. The working capital employed in the gas business is included in the working capital of the Georgia Railway & Power Company. Funds needed for the carrying on of the gas business have to be supplied by the Georgia Railway and Power Company. In addition to Conducting a gas business, the Georgia Railway and Power Company conducts an electric railroad business in Atlanta and vicinity, electric light and power distribution business in Atlanta and vicinity, and in many other municipalities in the Northern Section of the State of Georgia, and conducts hydro-electric
185 power business in the City of Atlanta and vicinity and in some fifty other municipalities and vicinity in the Northern section of the State of Georgia. While rates for each separate department of its public service business should, of course, be based upon the values of the property separately used in such departments, and upon the earnings of such separate departments, nevertheless, the funds earned and the funds expended have to come out of one joint treasury. The Combined company, including all of the departments conducted by respondent, is not earning and for many years past has not earned under the rates permitted to be charged by this Commission, a reasonable return on the *b*alue of its property devoted to the service. If the Gas Department had stood by itself as an independent company the service could not have withstood the losses it was forced to sustain during the past four years, and these losses have had to be borne by the Georgia Railway and Power Company to the detriment not only of its gas service, but it has crippled the ability of the Georgia Railway and Power Company to make the necessary improvements and expansions to carry on its various departments rendering public service. The statement of assets and liabilities shows a current or floating indebtedness for notes payable of the Georgia Railway & Power Company of $4,541,180.96. A portion of these notes payable are on account of the losses sustained in the Gas Department of the company. The territory served by respondent is in great need of additional electric power capacity in both generating stations, and transmission and distributing lines. Respondent is anxious to furnish such increased capacity. The supplying of the same would be of untold benefit to the public in the territory served by respondent. Respondent undertook the construc-

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tion of an additional hydro-electric development which would i
crease its electric power output generated from water power sour
about 50%. Respondent's earnings are, however, insufficient
justify the securing of the necessary capital to go forward with th
development, and one of the large contributing causes to its inabili
to raise this capital is the loss which it has sustained in its gas d
partment on account of the inadequate rates at which it has be
compelled to supply its gas service. A further reduction in its g
rates, particularly at the present time, would greatly injure respon
ent's general credit and make it just that much more difficu
186 if not impossible, for it to secure the capital necessary to ma
the developments needed for the service of this territory.

Exhibit No. 16 is a statement of the sales in cubic feet of gas b
respondent for each of the years 1913 to 1920, both inclusive, a
each month of the year 1921 from January to September, inclusive

Exhibit No. 17 is a statement of the gas sent out and the gas re
istered by meters for each month of the year 1921 from January
September, both inclusive, with similar information for the co
responding months of the year 1920. Attention is called to th
excess of gas registered by meters in September, 1921, over the g
sent out in the same month and to the fact that the gas registered b
meters in August, 1921, is practically equal to the gas sent out duri
the same month. This is due to the fact that the gas sent out, repr
sented in the operating expenses, is for the calender month, where
the gas registered by meters is for the meter reading period, whic
may be more or less in number of days than the calendar month, an
which includes gas sold but not made during the month, and som
times includes, when changes in rates are made, gas sold at differe
rates than those prevailing during the calendar month. The ord
nary loss between gas made and gas registered by meters would b
about 10% to 12%. A similar situation, due to a change in the ra
will be observed in April, 1921, when the gas registered by meters i
the meter reading period was in excess of the gas made in the calend
month of April.

This illustrates that the statement for one month or for a limit
period is not an illustration of actual results, but that to arrive at th
effect of the rate requires a longer period.

Exhibit No. 18 is a statement of the actual operating cost of ma
ufacturing and distributing gas per thousand cubic feet, exclusi
of taxes, interest, depreciation, and fixed charges, or return on capit
for each year 1913 to 1920, both inclusive, and for each month o
the year 1921, Jany. to Sept., both inclusive.

187 Exhibit No. 19 is a statement in detail of the expens
per thousand cubic feet of gas sold for each of the years 191
to 1920, both inclusive, and for each of the first eight months of 192
and for the eight months ended August 31, 1921.

Exhibit No. 20 is a statement of the comparative wage scales i
effect and paid by respondent in its Gas Department during th
year 1913, during the year 1920, and during August, 1921, showin
likewise the percentage of increase in August 1921, over the wa
scale prevailing in 1913. It will be noticed that the wage scale pa

vailing August 1921, which is the same wage scale prevailing at the present time, is for every class of worker a large increase over the wage scale prevailing in 1913. Also that there have been no reductions except in common negro labor in the wage scale paid to any of the workers in respondent's Gas Department, as compared with the sage scale in effect in 1920. Very few common negro laborers are employed in the operating department of respondent's gas business. They are employed, when employed, principally in construction work. Most of the workers are skilled workers. Their wages, while much higher than they formerly were, have never reached as high a scale as were paid for corresponding work in unregulated businesses. Not only have there been no reductions in the wages paid these workers, but there is no probability of any reduction being made in their wages. At any rate, their wages are fixed by a contract which does not expire until March 18, 1922, as to most of the, and Feb'y 18th, 1922, as to a small number of them, and there could not be any reduction in the wages prior to that time, and probably will not be any reductions at that time.

Exhibit No. 21 is a statement of comparative wage scales paid various classes of employees in the building trades in the City of Atlanta in 1913, in 1920, and in September 1921. It will be noted that the wages prevailing in September, 1921, are in each case a very large increase over the wage scale prevailing in 1913.

Exhibit No. 22 is a statement of the cost of gas coal per ton and gas oil per gallon paid by respondent in its Gas Department in each of the years 1913 to 1920, and during each month of the year 1921, Jan'y to August. There have been recent increases 188 in the price of gas oil. Respondent has been unable to make a contract with any of the large companies for the supply of gas oil, and has been purchasing gas oil for cash on the spot market. In this way it has been enabled to procure gas oil at the lowest possible price. It was probable that oil would cost more later in the year, but respondent believed that by pursuing this practice the average price which it would pay for oil during the year would be somewhat less than the price it could obtain under any contract. The low prices obtained during a part of the year should not, however, be taken as the average price for a year. The lowest price at which respondent has been able during this year to purchase oil delivered at its station was $0.055 per gallon and this only for a comparatively small quantity. The spot cash price for oil at the present time is $0.08 per gallon, delivered at respondent's station, with all conditions pointing to a further increase in the cost of gas oil.

Exhibit No. 23 is a statement of the freight rates on gas coal and on oil from the fields where respondent's supplies of these commodities are usually obtained. It will be noted that the freight and war tax on gas coal in September, 1921, is $2.63 per ton, and that this freight alone is more than the total cost of the coal with the freight delivered at respondent's manufacturing station was prior to the year 1916. That the freight on gas oil at the present time is more than the total cost of gas oil with the freight delivered at respondent's manufacturing station was in the year 1915.

Exhibit No. 24 is a statement of the revenues, expenses and net earnings of the Gas Department of respondent for each of the years 1913 to 1920 inclusive, and for each month of the year 1921 from January to August, both inclusive, and for the year ended August 31, 1921.

The amount of taxes charged in expenses on this exhibit in each of the months Jan'y to August, both inclusive, is $3,500.00 greater than the amount shown on the statements heretofore filed with this Commission. The reason for this is that the taxes were estimated at the beginning of the year upon the basis of there being a 10% increase in such taxes over the taxes paid in the year 1920.

189 During the year 1920 the company earned no net income subject to the Federal Income Tax. It will earn some net income during the year 1921 subject to the Federal Income Tax. Likewise, the amount of tax against income by the Federal Government will probably be 12% or more, as compared to 10% assessed under the Income Tax law in 1920. To meet this increase in taxes respondent revised its estimate of taxes for the year 1921. The taxes which will actually be assessed against the gas business and property of respondent during the year 1921 will be $141,163, which is an excess of $49,003, over the amount estimated at the beginning of the year, so that the total taxes which should be charged in each month during the year 1921 on account of the Gas Department is $11,180, approximately, instead of $7,680.

Exhibit No. 25 is a statement of the maximum net rates for gas charged by respondent in its Gas Department in the City of Atlanta from November, 1884 to this date.

18. That in the order of this Commission of September 22nd, 1920, granting an increase in the gas rates to be charged by the respondent in its gas business, respondent was directed by the Commission to make improvements and enlargements in the manufacturing, transmission, and distribution facilities, involving an expenditure on this account of approximately $400,000 to $500,000. Notwithstanding the fact that the Gas Department of respondent was not earning and was not permitted by this order to earn the cost of furnishing gas service including a reasonable return on any valuation of its property, respondent, nevertheless, immediately undertook to carry out these orders of the Commission, and thereby diverted funds which were badly needed in other departments of respondent's business, and increased the indebtedness of respondent. Respondent has diligently carried on the program of constructing and acquiring necessary improvements and enlargements ordered by this Commission, and has carried out other works necessary for the improvement of the gas service. Respondent expended on new construction in its Gas Department during the year 1920, the sum of $213,444.16, and has expended and is expending on enlargements and improvements to its gas department during the

190 year 1921 the sum of $397,433.41, making a total expenditure for construction purposes in its Gas Department for the years 1920 and 1921, of $610,877.57.

19. Respondent shows that the Gas service supplied by it at the present time is good; that its gas making capacity has been increased and the pressure conditions over the system have been improved. The quality of gas is high, and the gas service now being furnished and for some time in the past having been furnished, is substantially free from any reasonable ground of complaint, and that the gas service supplied by it is well worth the price now being charged for such gas service.

Respondent further shows that the plant or property used by respondent in manufacturing and supplying gas is in good operating condition; that it is efficient; that the business is conducted efficiently and economically; that there is no great excess of capacity, but that the plant and system are suited to the needs of the community, and that it has not been extravagantly built or improperly operated; that there is no excess mileage of mains; that the holder capacity is reasonably sufficient but by no means excessive, and that its business and the sales of gas per mile of main, per consumer and per capita compare favorably with the best conducted gas plants in other cities.

As further confirming these averments of respondent with reference to its plants, transmission and distribution systems and the efficiency and economy in its business, respondent prays leave of reference to the report of Mr. H. E. Riggs of April, 1921, heretofore referred to. Mr. Riggs made a careful and thorough examination of respondent's property, records and business, and reported "I am impressed with the effectiveness of the equipment. The coal handling plant is as good as I have ever seen in a gas plant. The coal gas generating plant is most uptodate. The whole coal gas equipment is in excellent condition, especially when compared with that found in other plants. The present water gas generators were installed in 1892, 1894, 1907, and two in 1918, additional ones now going in. This plant is operated as a combined plant."

Mr. Riggs likewise made comparison of the costs of manu-
191 facture of gas in Atlanta and in other Cities, and set forth certain statistical tables. From these tables he reports

"1. The miles of main in streets in Atlanta are not at all in excess of what should be found here.

2. That the holder capacity is very good for the present output and population, but by no means excessive.

3. That miles of main, per consumer and per capita compare favorably with such cities as Denver, Providence and St. Paul."

The conclusion is forced upon me that the gas property at Atlanta is a good property, and that while not at all over-developed, it is keeping fairly well abreast of other prosperous properties in comparable cities in the United States, so far as plant is concerned."

20. Respondent shows that the War has been ended for a sufficient time to permit general business matters, price of materials, and so on, to become reasonably stabilized, and that the present cost of

labor, with the cost of material and other operating expenses, will probably continue as they now are and upon present levels for the next several years.

Wherefore, respondent shows to this honorable body that it is entitled to a fair return upon the fair and reasonable value of the property devoted to the public use, and it prays:

1st. That this honorable body do now proceed to find and fix the present fair and reasonable value of respondent's property devoted to the public service in its gas department, and that it do itemize said finding so that it can be examined separately and in detail.

2nd. That the loss sustained during the past four years, as above set forth, amounting to about One Million Dollars, be either amortized during the next succeeding period of four years, or such other reasonable time as this honorable body may determine, or that respondent be permitted to at once capitalize said loss.

And Respondent further prays that its present rates may be so revised and increased as to give a fair and just return upon the value of its property devoted to the public service.

192 (Signed) COLQUITT & CONYERS,
" L. Z. ROSSER,
" CHAS. T. HOPKINS,
" J. PRINCE WEBSTER,
" SPALDING, MACDOUGALD & SIBLEY,

Attys. for Gr. Rwy. & Power Company, Respondent.

193 STATE OF GEORGIA,
County of Fulton:

Personally before the undersigned attesting officer appeared P. S. Arkwright, who, being sworn, says on oath: That he is President of the Georgia Railway and Power Company, the respondent in the foregoing and attached answer to the Rule Nisi issued by the Railroad Commission of Georgia in the matter of the revision of the gas rates to be charged by such respondent: that he has read the foregoing answer; that he has knowledge of the facts stated in such answer; and that the statements of fact contained in such answer are true to the best of deponent's knowledge, information and belief.

(Signed) P. S. ARKWRIGHT.

Sworn to and subscribed before me this October 31, 1921.

(Signed) EDWARD CRUSSELLE,

Notary Public, Fulton Co., Ga.

194 Georgia Railway and Power Company.

Copies of All Exhibits Filed with Railroad Commission in re Gas Rates.

October 31st, 1921, November 1st, 1921.

U. S. District Court. Filed in Clerk's Office Jan. 27, 1922. O. C. Fuller, Clerk.

195 EXHIBIT NUMBER 1.

General Summary Atlanta Gas Light Company, Atlanta, Georgia, Including Items of Additional Cost.

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Land	$191,374	16.0	$222,000	100	$222,000
Transmission and Distribution	4,656,770	18.40	3,799,800	90	3,412,261
Buildings and Miscellaneous Structures	318,888	4.24	305,368	81	246,302
Plant Equipment	1,832,690	9.32	1,661,903	79	1,316,653
General Equipment	68,750	1.70	71,296	82	58,835
Paving Actually Disturbed	113,202	20.0	135,842	89	120,900
Total physical Property as of January 1, 1919	7,181,674	13.72	6,196,209	87	5.376,951

General Summary Atlanta Gas Light Company.—Continued.

Net additions and improvements from construction account.	Without correction.	Correction factor.			
Year 1919	76,966	86.1	66,248	100	66,248
Year 1920	237,329	87.6	207,924	100	207,924
9 Months 1921	309,832	93.0	288,053	100	288,053
Total Physical Property September 30, 1921.	7,805,801	23.42	6,758,434	88	5,939,176

196 *General Summary Georgia Railway and Electric Company, Gas Department, Decatur, Georgia, Including Items of Additional Cost.*

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Transmission and Distribution	$151,751	17.35	$125,460	96	$120,244
General Equipment	835	19.2	996	85	847
Paving Actually Disturbed	19,454	20.0	23,345	96	22,411
Total physical Property as of Jan. 1, 1919	172,040	87	149,801	96	143,502
Net additions and improvements from construction account.	Without correction.	Correction factor.			
Year 1919	6,289	86.8	5,461	100	5,461
Year 1920	8,053	87.0	7,004	100	7,004
9 Months 1921	6,075	92.3	5,607	100	5,607
Total physical Property Sept. 30, 1921	193,457	87	167,873	96	161,574

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197 EXHIBIT NUMBER 2.

Georgia Railway & Power Company, Gas Department, Working Capital as of September 27, 1921.

Materials and Supplies, from Company Report for Aug. 31, 1921.

Gas Works	$2,593.04	
Decatur Street Gas	64,103.57	
Gas Sundry Sales, E. & G. Bldg.	3,210.51	
Purification Supplies	5,848.32	
Enricher Coal Gas Stock	1,150.40	
Boiler Fuel Stock Gas	566.62	
Gas Stock	1,268.75	
Gas Main Department	11,550.39	
Ammoniacal Liquor	1,043.75	
Crude Tar	10,133.85	
Estimated (60 days' supply):		
Gas Coal 7,845.82 tons @ $5.51	43,230.47	
Gas Oil 581,350 Gal. @ .075	43,601.25	
Generator and Bench Fuel (Coke) 3,386.8 tons @ $7.00	23,707.60	
Steam Coal 428.15 tons @ $3.91	1,664.07	
Breese (Boiler Fuel) 1,300.7 tons @ $4.00	5,202.80	
Total Materials and Supplies		$218,875.39
Average Cash Requirements (1/10 Gross Rev.) (1½ Mos. Operating		206,631.07
		$425,506.46
Use		$425,000.00

OSE IN CENTER

198 EXHIBIT No. 3.

Atlanta and Decatur Gas Properties.

Valuation Made by Messrs. Baehr and Luick, Engineers, of the Physical Properties of the Gas Department at Current Price Basis to Which is Added an Amount for Adaptation, Unification, etc., and a Cash Working Capital as of September 30th, 1921.

Total physical property as valued by the engineer at current price basis depreciated as of September 30th, 1921:

Atlanta District	$5,939,176	
Decatur District	161,574	
Total physical property		$6,100,750
Add for going concern adaptation, unification, etc.		1,000,000
		$7,100,750.00
Add for a cash working capital		425,000.00
Total value of Gas Properties		$7,525,750.00

EXHIBIT #4.

Georgia Railway and Power Company.

Gas Department.

Construction & Equipment.

	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.	8 mos. 1921.
Buildings & Lands	.....	*459.00	.....	1,053.03	408.27	1,753.02	.....	389.09	14,069.64
Gas Works....	45,363.16	6,381.65	.....	6,492.82	13,007.04	29,069.60	7,237.14	96,118.45	130,063.02
Holders	.....	.....	.....	.....	.....	.....	.....	.....	.....
Street Main...	48,847.23	20,053.96	23,258.60	21,867.61	56,612.87	2,171.09	20,862.28	40,183.12	57,465.22
Services	21,861.65	16,625.31	13,489.88	14,375.60	15,988.54	14,056.44	26,636.08	35,679.94	28,963.92
Meters	15,016.26	9,242.00	*1,313.35	14,126.08	19,766.48	22,862.72	6,134.03	31,516.59	25,885.47
Other Equipment	*49.61	3,645.97	877.22	7,159.25	*1,719.87	*830.20	6,445.94	9,556.97	*8,250.00
Total ...	131,038.69	55,489.89	36,312.35	65,074.39	104,063.33	69,082.67	67,315.47	213,444.16	248,217.27

*In red.

200 EXHIBIT #5.

The following statement shows the total amount charged to diff
ent construction accounts of the Atlanta Gas Light Company, f
the period January 1st, 1921 to August 31st, 1921.

Estimated amounts that will be charged for the period Septem
1st, to December 31st, 1921.

Total amount that will be charged for period January 1st, 192
to December 31st, 1921.

Atlanta Gas Light Company.

	Eight mos. ended 8/31/21.	Estimated for 4 months.	Total for year 1921
Plant Equipment.....	130,063.02	69,270.37	199,333.
Buildings and Fixtures.	14,069.64	1,945.77	16,015.
Gas Mains and Services	86,449.14	65,000.00	151,449.
Miscellaneous	17,635.47	13,000.00	30,635.
Total	248,217.27	149,216.14	397,433.

Account.		Eight mos. ended 8/31/21.	Estimated for 4 mos.	Total for year 1921.
416-18	Installation of New Water Gas Blowing Unit.....	583.31	.....	583.31
416-19	Installation of Mixed Gas Booster.....	78.74	.....	78.74
416-20	Installation of Duplicate Chain for Verticle Coke Conveyor, Including buckets.....	219.56	.....	219.56
416-21	Installation of one Thomas Meter of 400,00 cu. ft. capacity	88.78	.....	88.78
416-22	Installation of two New Ingersoll-Rand Compressors for forcing gas to College Park and East Point.....	4,675.01	.....	4,675.01
416-23	Installation of one 250 H. P. Babcock-Wilcox Boiler....	79.20	.....	79.20
416-24	Installation of one 10 ft. 6 water gas set with overhead coke bin, coke conveyer and blowing apparatus.....	221.75	.....	221.75
416-25	Installation of waste heat boiler in Coal Gas plant.....	374.57	923.08	1,297.65
416-26	Installation of Water Gas Purifier, 21 feet diameter 11 feet 6 inches high.....	6,592.66	354.83	6,947.49
416-27	Installation of mixed gas pusher to be used for pumping gas from Gas Works to Storage Holders.....	550.90	.....	550.90
416-28	Installation of two steam turbine driven pushers for intermediate pressure pusher plant.....	32,053.96	.....	32,053.96
	Forward	45,518.44	1,277.91	46,796.35
202	Forward	45,518.44	1,277.91	46,796.35
416-29	Installation of approximately 450 ft. of steam piping at Gas Works	4,362.16	.....	4,362.16
416-30	Installation of Debrower Combination charging and discharging machine	8,701.96	.....	8,701.96

Plant Equipment.—Continued.

Account.		Eight mos. ended 8/31/21.	Estimated for 4 mos.	Total for year 1921.
416-31	Installation of One #10 Sturtevant Blower.....	6,902.26	.....	6,902.26
416-32	Installation of one Doherty Washer Cooler.....	14,509.69	25,490.31	40,000.00
416-33	Installation of One 11 ft. set U. G. I. Standard Double Super Heated Lowe Water Gas Apparatus.....	34,196.73	24,787.86	58,984.59
416-34	Erection of Concrete wall around oil storage tanks at Station A Gas Works.....	1,485.00	.....	1,485.00
416-35	Installation of Steam Turbine driven Super-centrifuge, with one extra motor; also tar receiving tank, foundations, piping, etc.....	1,229.66	370.34	1,600.00
416-36	Installation of Hays Automatic Co. No. 2 and draft Recorder	391.16	.....	391.16
416-37	Installation of two steel water gas purifiers having a combined capacity of 2½ million cu. ft. per 24 hours.....	15,202.20	14,547.80	29,750.00
416-38	Installation of Complete set levers, shafts toggles, etc., for Bunker Valve Operating Mechanism.....	6.22	943.78	950.00
	For'd	132,505.48	67,418.00	199,923.48
203	For'd	132,505.48	67,418.00	199,923.48
416-39	Extension of the present oxide platform so as to meet the new stone retaining wall, in connection with the installation of the new purifiers.....	94.73	302.37	397.10
416-40	Removal of a second hand boiler and smoke stack from Gainesville Power Station to the Gas Works. Also the installation of same.....	.....	1,550.00	1,550.00
		132,600.21	69,270.37	201,870.58

		Less:				
11—801	416-0	Equipment destroyed by fire at Gas Works on November 24, 1916	2,236.36			
	416-0	Miscellaneous Material returned	300.83	2,537.19	.....	2,537.19
		Total		130,063.02	69,270.37	199,333.39
	204	*Buildings and Fixtures.*				
	417-2	Erection of two story building to house two new Ingersoll-Rand Compressors, and two Delaval Steam Driven Pushers the second room to be suitable for a locker and a bath room for the white employees		13,054.23	1,945.77	15,000.00
	417-3	Building steel frame building to house one 11 ft. set U. G. I. Standard Double Super-Heated Lowe Water Gas Apparatus		1,015.41	.....	1,015.41
		Total		14,069.64	1,945.77	16,015.41

Gas Mains and Services.

Account.		Eight mos. ended 8/31/21.	Estimated for 4 mos.	Total for year 1921.
418	Street Mains	57,465.22	50,000.00	107,465.22
429	New Meter Connections	5,332.20	3,000.00	8,332.20
430	Gas Services	23,651.72	12,000.00	35,651.72
	Total	86,449.14	65,000.00	151,449.14
	Miscellaneous.			
431-3	Meters	25,885.47	13,000.00	38,885.47
431-4	Miscellaneous	325.00	.....	325.00
		26,210.47	13,000.00	39,210.47
	Less:			
431-1	Stable	8,575.00	.....	8,575.00
	Total	17,635.47	13,000.00	30,635.47

206 EXHIBIT No. 6.

Atlanta and Decatur Gas Properties.

Valuation by the Railroad Commission of Georgia for Atlanta Gas Light Company Properties as of January 1, 1918, with Additions for New Construction to August 31, 1921, and Estimate for the Construction Work under Way and to — Completed Between August 31, 1921, and Dec. 31, 1921, and the Book Value of the Decatur Properties.

August 31, 1921.

Valuation by the Railroad Commission of Atlanta Gas Light Company properties as of January 1st, 1918		$3,500,000 00
Additions from January 1st, 1918 to August 31st, 1921:		
Accomplished year 1918	$69,082 67	
" " 1919	67,315 47	
" " 1920	213,444 16	
8 mos. to Aug. 31, 1921	248,217 27	
		598,059 57
Estimate for construction for 4 months from August 31, 1921 to Dec. 31, 1921		149,216 14
Decatur District property at the value shown in the books of the Company		78,322 69
Total physical properties		$4,325,598 40
Add for Adaptation, unification, etc		432,559 84
		$4,758,158 24
Add for cash working capital		408,000 00
Total		$5,166,158 24

B.

207 EXHIBIT No. 7.

Georgia Railway & Power Company.

Atlanta and Decatur Gas Properties.

Statement of Earnings and Operating Expenses and Net Earnings and Return on the Investment for Twelve Months, Assuming the Months of June, July, August, and September, 1921, *to be Average Months as to Operating Expenses and Quantity of Gas Sales, and Supplying a Rate Equal to 97% of the Maximum Net Rate, $1.65 per M C. F., namely, $1.6005, the average named by Dr. H. E. Riggs on Page* 38, *of His Report of April,* 1921, *on the Gas Property of the Georgia Railway & Power Company.*

Account.	Amount.
Revenue:	
Revenue from sale of Gas	$1,860,759 87
Revenue from other sources	18,894 69
	$1,879,654 56
Expenses:	
Operating expenses, (not including depreciation)	$1,292,300 73
Taxes	134,160 00
	$1,426,460 73
Depreciation at 2½% on valuation form No. B	108,140 00
	$1,534,600 73
Maintenance reserve	*12,099 87
	$1,522,500 86
Net earnings	357,153 70

Return on valuation form No. B—equal to 6.91334%.

NOTE.—If a rate equal to 98% of the maximum net rate of $1.65 per M c. f. is applied the return would be 7.28468%.

*In red.

208 EXHIBIT No. 8.

Atlanta and Decatur Gas Properties.

Valuation from Dr. Riggs' Report, Page 20, Based on the Inventory of Jan. 1, 1919, Investment Basis Plus the Additions and Betterments to March 1, 1921, to which is Added Construction for Six Months Ended August 31, 1921, and an Estimate for Construction to be Made During the 4 Months to December 31, 1921.

August 31, 1921.

Physical property at March 1, 1921 as per Dr. Riggs' report page 20	$4,441,305.00
Expenditures for construction for six months from March 1, 1921 to August 31, 1921	210,787.27
Estimate for Construction to be done between August 31, 1921 and the close of December 31, 1921	149,216.14
Total Physical Property	$4,801,308.41
Value as an established business—10%	480,130.84
	$5,281,439.25
Cash working capital as used by Dr. Riggs in his Report	414,000.00
Total	$5,695,439.25

D2.

209 EXHIBIT No. 8*a*.

Georgia Railway & Power Company.

Atlanta and Decatur Gas Properties.

Statement of Earnings and Operating Expenses and Net Earnings and Return on the Investment for Twelve Months, Assuming the Months of June, July, August, and September, 1921, to be Average Months as to Operating Expenses and Quantity of Gas Sales, and Applying a Rate Equal to 97% of the Maximum Net Rate, $1.65 per M C. F., Namely, $1.6005, the Average Named by Dr. H. E. Riggs on Page 38 of His Report of April, 1921, on the Gas Property of the Georgia Railway & Power Company.

Account.	Amount.
Revenue:	
Revenue from sale of Gas	$1,860,759.87
Revenue from other sources	18,894.69
	$1,879,654.56
Expenses:	
Operating expenses (not including depreciation)	$1,292,300.73
Taxes	134,160.00
	$1,426,460.73
Depreciation at 2½% on valuation form No. D2	120,032.71
	$1,546,493.44
Maintenance reserve	*12,099.87
	$1,534,393.57
Net Earnings	$345,260.99
Return on valuation form No. D2 equal to	6.06206%
NOTE.—If a rate equal to 98% of the maximum net rate of $1.65 per M c. f. is applied the return would be	6.39887%

D3.

*In red.

210 EXHIBIT No. 9.

Georgia Railway & Power Company.

Atlanta and Decatur Gas Properties.

Statement of Earnings and Operating Expenses and Net Earnings and Return on the Investment for Twelve Months, Assuming the Months of June, July, August, and September, 1921, *to be Average Months as to Operating Expenses and Quantity of Gas Sales, and Applying a Rate Equal to* 97% *of the Maximum Net Rate,* $1.65 *per M C. F., Namely,* $1.6005, *the Average Named by Dr. H. E. Riggs on Page* 38 *of His Report of April,* 1921, *on the Gas Property of the Georgia Railway & Power Company.*

Account.	Amount.
Revenue:	
Revenue from sale of Gas	$1,860,759.87
Revenue from other sources	18,894.69
	$1,879,654.56
Expenses:	
Operating expenses (not including depreciation)	$1,292,300.73
Taxes	134,160.00
	$1,426,460.73
Depreciation at 2½% on valuation Exhibit No. 3	173,157.68
	$1,599,618.41
Maintenance reserve	*12,099.87
	$1,587,518.54
Net Earnings	$292,136.02
Return on valuation Exhibit No. 3 equal to	3.88182%

L. C. 3 ex. 3.

*In red.

211 EXHIBIT No. 10.

Georgia Railway & Power Company.

Atlanta and Decatur Gas Properties.

Statement of Earnings and Operating Expenses and Net Earnings and Return on the Investment for the Twelve (12) Months Ended September 30, 1921, Being the Same as the Report to the Railroad Commission of Georgia Except as to the Depreciation, Which Latter is Based upon Mr. Luick's Valuation, and the Rate of Return also Based upon Mr. Luick's Valuation.

September 30th, 1921.

Account.	Amount.
Revenue:	
Revenue from sale of gas	$2,120,404.00
Revenue from other sources	31,335.93
	$2,151,739.93
Expenses:	
Operating expenses (not inc. depreciation)	$1,713,501.09
Taxes	102,321.23
	1,815,822.32
Depreciation at 2½% on valuation exhibit No. 3	173,157.65
	1,988,979.97
Maintenance reserve	*54,305.53
	$1,934,674.44
Net Earnings	217,065.49
Return on valuation exhibit No. 3 equal to	2.88430%

L. C. 3.

212 EXHIBIT No. 11.

Exhibits.

There is no Exhibit No. 11.

*In red.

Statement Showing Amounts by Which Atlanta Gas Light Company Has Failed to Earn 8% Return on Railroad Commission's Minimum Valuation of $3,500,000 *(Plus Additions) of Property After Allowing only 2½% for Depreciation, for Years* 1917, 1918, 1919, *and* 1920.

	1917.	1918.	1919.	1920.
Railroad Commission's 1918 Valuation (plus additions)	$3,500,000.00	$3,500,000.00	$3,569,082.00	$3,636,398.00
Additions to property	.....	69,082.00	67,315.00	213,444.16
Commission's Valuation (plus additions)	3,500,000.00	3,569,082.00	3,636,397.00	3,849,842.16
Add for Decatur Plant	.....	.....	.....	170,000.00
Total physical property	3,500,000.00	3,569,082.00	3,636,397.00	4,019,842.16
Add for ad-ptation, etc	350,000.00	356,908.00	363,640.00	401,984.00
	3,850,000.00	3,925,990.00	4,000,037.00	4,421,826.16
Add for working capital	170,352.00	170,352.00	170,352.00	170,352.00
Total Gas Properties	4,020,352.00	4,096,342.00	4,170,389.00	4,592,178.16
8% Return on above value equals	321,628.16	327,707.43	333,631.19	367,374.25
Gross Revenue	939,297.91	1,070,463.01	1,347,223.49	1,708,661.78
Operating Expenses	648,911.93	850,287.07	966,877.45	1,585,192.66
Net Earnings	290,385.98	220,175.94	380,346.04	123,469.12
Taxes	80,280.09	72,913.04	94,423.28	83,800.95
Balance after Taxes	210,105.89	147,262.90	285,922.76	39,668.17

EXHIBIT No. 12.—*Continued.*

	1917.	1918.	1919.	1920.
Depreciation: 2½% on R. R. Commission's Minimum Valuation plus additions.....	87,500.00	89,227.07	90,909.95	100,496.05
Balance	132,605.89	58,035.83	195,012.81	*60,827.88
Per cent earned on Railroad Commission's 1918 minimum valuation, plus additions..	3.29%	1.41%	4.67%	Nil.
*Deficit under 8% Return.....	*189,022.27	*269,671.60	*138,618.38	*428,202.13
*Total deficit for the four years ended December 31, 1920.....				*1,025,514.38

*In red.

Georgia Railway & Power Company.

Gas Department.

Revenue, Expenses, Taxes, Reserves, and Gain or Loss 4 Year Period 1917 to 1920, Inclusive, Based Upon Georgia Railroad Commission Valuation of 1921, Adjusted for Former Years.

Copied from Mr. Riggs' Report.

	1917.	1918.	1919.	1920.
Gross Revenue	939,298	1,070,463	1,347,223	1,708,662
Operating Expenses	648,912	850,287	966,877	1,585,193
Operating Revenue	290,386	220,176	380,346	123,469
Taxes	80,280	72,913	94,423	83,801
Net Income	210,106	147,263	285,922	39,668
Reserve for Replacements	86,199	88,363	90,068	97,162
Net Earnings	123,907	58,900	195,854	*57,494
Fair Return	297,234	324,668	330,669	341,400
Gain or Loss (Deficit under Fair Return)	*173,327	*265,768	*134,815	*398,894
Total deficite for last four years				*972,804

*In red.

215 EXHIBIT No. 14.

Atlanta Gas Light Company.

Balance Sheet.

September 30th, 1921.

Assets.

Plant Account	$4,518,396.
New Construction	282,167.
Payments in Bonds to G. R. & P. Co. for construction	19,487.
Treasury Bonds	630,000.
Sinking Fund Bonds, Refunding and Improvement	20,000.
Sinking Fund Bonds, First Mortgage	312,000.
Sinking Fund Bonds, other	3,620.
Georgia Railway & Power Company	116,654.
New York Trust Co., Sinking Fund Trust	7,886.
Girard Trust Trust Co., Sinking Fund Trust	600.
Total Assets	5,910,813.

Liabilities.

Capital Stock:	
Preferred	600,000.
Common	1,014,625.
First Mortgage Bonds 5-50	1,150,000.
Refunding & Improvement Bonds	650,000.
Sinking Fund Refunding & Improvement	20,452.
New Construction G. R. & P. Co.	495,611.
Depreciation Reserve	318,144.
Balance	1,661,980.
Total Liabilities	5,910,813.

16

Exhibit No. 15.

Georgia Railway & Power Company.

Statement September 30th, 1921.

Assets.

onstruction, Plant	$48,878,956.35
quipment Under Trust	503,249.66
upplies	737,118.90
ash	83,881.05
otes & Accounts Receivable	785,199.87
repaid Accounts	32,662.65
tocks and Bonds	964,062.92
reasury Bonds	4,043,500.00
ond Discount	641,891.01
uspense Accounts	84,655.77
inking Fund Bonds	433,000.00
eorgia Railway & Electric Co.	1,078,070.38
tlanta Gas Light Co.	476,124.44
	$58,742,373.00

Liabilities.

apital Stock, First Preferred	$2,000,000.00
apital Stock, Second Preferred	10,000,000.00
apital Stock, Common	15,000,000.00
ortgage Bonds	17,610,500.00
ollateral Gold Notes	2,500,000.00
quipment Trust Certificates	316,000.00
ccounts Payable	589,529.20
otes Payable	2,058,940.23
ividends Accrued on First Preferred Stock	610,000.00
nterest Payable	65,511.23
axes Payable	544,316.09
ccrued Fixed Charges—Leased Companies	354,749.62
eserve Funds	*77,771.60
epreciation Reserve	2,738,018.67
eorgia Railway & Electric Co.	465,678.82
tlanta Gas Light Co.	116,654.61
alance	3,850,246.13
	$58,742,373.00

[*In red.]

217 EXHIBIT No. 16.

Atlanta Gas Light Company.

Gas Sales for Years 1913-1920.

1913	863,874,200	Cubic Feet.
1914	885,831,900	" "
1915	856,244,400	" "
1916	878,114,400	" "
1917	957,028,100	" "
1918	1,091,694,000	" "
1919	1,203,325,000	" "
1920	1,387,932,100	" "

1921.

January	125,993,800
February	126,882,700
March	111,125,000
April	124,881,100
May	108,161,200
June	93,818,000
July	91,547,500
August	100,358,600
September	101,812,300

218 EXHIBIT No. 17.

Gas Sent Out and to Account for and Gas Registered by Meters, 1920 & 1921.

In Cubic Feet.

	Sent out and to account for.		Registered by meters.	
	1920.	1921.	1920.	1921.
January	138,348,104	152,552,679	132,354,300	125,993,800
February	140,698,022	132,616,651	124,464,100	126,882,700
March	123,126,200	134,079,779	123,126,200	111,125,000
April	125,793,179	122,062,658	122,297,500	124,881,100
May	124,645,967	120,278,672	115,043,900	108,161,200
June	107,345,118	98,915,068	105,334,500	93,818,000
July	106,319,430	99,641,948	99,167,600	91,547,500
August	120,892,397	101,318,932	97,991,600	100,358,600
September	114,384,495	100,991,045	103,050,800	101,812,300

EXHIBIT #19.

Georgia Railway and Power Company.

Gas Department.

Detailed Expense per 1,000 *Cubic Ft. Gas Sold.*

	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.	Jany.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Eight Mos.
Labor Mfg.	.0578	.0570	.0594	.0614	.0710	.1007	.1365	.1791	.2075	.1641	.1804	.1569	.2136	.2008	.2048	.2121	.1910
Material Mfg.	.3652	.3668	.3359	.3552	.6046	.6706	.6449	.9557	1.1514	.9815	.9277	.6933	.7522	.7242	.6796	.7687	.8473
Total Mfg. Exp.	.4230	.4238	.3953	.4166	.6756	.7713	.7814	1.1348	1.3589	1.1456	1.1081	.8502	.9658	.9250	.8844	.9808	1.0383
Cr. for Resid.	.1394	.1617	.1633	.1381	.1760	.1812	.1652	.1899	.1789	.1605	.1593	.1353	.1501	.1574	.1676	.1394	.1562
Net Cost of Mfg.	.2836	.2621	.2320	.2785	.4996	.5901	.6162	.9449	1.1800	.9851	.9488	.7149	.8157	.7676	.7168	.8414	.8821
Dist. Exp.	.0796	.0672	.0727	.0641	.0704	.0809	.0895	.0967	.1029	.0864	.0941	.1040	.1266	.1643	.1827	.1454	.1221
Com. Exp.	.0704	.0713	.0663	.0694	.0724	.0851	.0856	.0567	.0605	.0680	.0667	.0654	.0665	.0913	.0835	.0780	.0714
Sal. Gen. Off.	.0158	.0152	.0159	.0155	.0174	.0153	.0140	.0154	.0152	.0151	.0172	.0154	.0177	.0204	.0209	.0179	.0172
Other Gen. Exp.	.0218	.0165	.0214	.0190	.0244	.0250	.0205	.0531	.0481	.0488	.0568	.0586	.0797	.1031	.0921	.0856	.0693
New Business	.0326	.0395	.0266	.0243	.0094	.0028	*.0167	.0169	.0137	.0141	.0176	.0146	.0169	.0189	.0179	.0178	.0162
Taxes	.0824	.0788	.0793	.0814	.0839	.0668	.0783	.0604	.0887	.0881	.1006	.0895	.1034	.1191	.1221	.1113	.1013
All. for Dep.	.0917	.0923	.0967	.0958	.0901	.0810	.0747	.0700	.0728	.0723	.0825	.0734	.0848	.0978	.1001	.0914	.0831
Total	.6779	.6429	.6109	.6480	.8676	.9470	.9621	1.3141	1.5819	1.3779	1.3843	1.1358	1.3113	1.3825	1.3361	1.3888	1.3627

[*In red.]

COPY BOUND

19

Exhibit No. 18.

ost of Manufacturing, Distributing, and Delivering Gas per M Cubic Feet, Exclusive of Taxes, Interest, Fixed Charges, and Depreciation.

	Per M.
913	$0.5617
914	0.4718
915	0.4349
916	0.4708
917	0.6936
918	0.7972
919	0.8092
920	1.1837
1921.	
anuary	1.4204
ebruary	1.2175
larch	1.2013
pril	.9728
ay	1.1232
une	1.1656
uly	1.0977
ugust	1.1861
eptember	.9862

(Here follows Exhibit No. 19, marked page 220.)

LOSE IN CENTER

EXHIBIT No. 20.

Georgia Railway & Power Company.

Gas Department.

Comparative Wage Scale.

Gas works:	1913.	1920.	Aug., 1921.	% increase August, 1921, over 1913.
Water Gas Maker	.16⅔–.22 hr.	.57½ hr.	.57½ hr.	197.46
Water Gas Helper	.14	.37½–.57½	.40	185.71
Fitter	.25–.35	.76⅔	.76⅔	155.53
Boiler Fireman	.15–.16⅔	.40–42½	.40–42½	160.58
Teamster	.13	.35	.25–.30	111.54
Laborer	.13	.35–.40	.20–.25	73.07
Stoker	.15–.16	.40–.42½	.40–.42½	166.13
Machinist	.30	.76⅔	.76⅔	155.53
Bench Fireman	.15	.40	.42½	183.33
Shop:				
Inspectors	.25–.30	.65	.65	136.36
Fitters	.22½–.35	.61 1/9–.75⅔	.16 1/9	112.56
Helpers	.15–.20	.38 8/9–.58⅓	.38 8/9	122.17

Street gang:				
Gang Foreman	.20–.33⅓	.65	.65	142.99
Joint Maker	.17–.17½	.43	.43–.35	126.09
Laborer	.15	.35	.25–.30	83.33
Meter shop:				
Meter Repairers	.25–.27½	.49–.53	.61 1/9	132.80
Stove Repairers	.17½	.40–.46	.47½	171.42
Helpers	.15–.17½	.34½	.40⅔	150.21
Miscellaneous:				
Meter Readers & Collectors	60.–90. Mo.	90.–105. mo.	95.–105. Mo.	33.33

222 EXHIBIT No. 21.

Comparison of Rate of Wages (for Regular Working Hours) Pa
Various Employees in the Building Trade.

		Maximum, 1920.	September, 1921.
Brickmasons	0.60	$1.45	0.87½¢
Carpenters	0.35	0.90	0.70
Plumbers	0.60	1.50	1.00
Steam Fitters	0.50	1.15	1.00
Electricians (House Wiring)	0.50	1.20	1.00
Iron Workers	0.60	1.30	1.00
Common Labor	0.15	0.45	0.25¢

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EXHIBIT No. 22.

Georgia Railway & Power Company.

Gas Department.

Cost of Fuel.

	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.
Gas Coal per Ton.....	2.5823	2.5613	2.5479	2.6802	4.5495	5.0091	4.6041	6.6079
Gas Oil, Per Gallon.....	.058125	.05847	.04758	.05337	.07499	.09561	.08321	.11143

Year 1921.

	Jany.	Feby.	March.	April.	May.	June.	July.	Aug.	8 months.
Gas Coal, Per ton.....	8.2143	7.088	6.1617	5.8238	5.636	5.65	5.592	5.5114	6.28
Gas oil, Per Gallon.....	.12676	.12138	.10537	.10126	.08316	.07452	.07792	.07542	.1005

224 EXHIBIT No. 23.

Georgia Railway & Power Company,

Gas Department.

Freight on Gas Coal and Gas Oil to Atlanta.

	Sept., 1913.	Sept., 1921.
Freight on Coal, per ton from Harlan, Ky. to Atlanta, Ga.	$1.50	$2.56½
Freight on Oil, per gallon from Texas to Atlanta, Ga.	.03¢	.451¢
Freight on Oil, per gallon from Oklahoma to Atlanta, Ga.	.0333¢	.05 ¢

225 EXHIBIT No. 24.

Gas Rates in Atlanta.

Rate for the First 1,000 Cu. Ft. (Net Rate).

November, 1884, to September, 1918	$1.00
September, 1918, to October, 1920	1.15
October, 1920, to February, 1921	1.45
February, 1921, to June, 1921	1.90
June, 1921, to Date	1.65

(Here follows Exhibit No. 25, marked page 226.)

No. 25.

Georgia Railway & Power Company.

Gas Department.

Operating Revenues and Expenses.

Revenue:	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.
Rev. from sale of Gas..	849,045.12	871,955.51	842,082.14	861,733.21	934,395.07	1,067,710.36	1,342,582.74	1,648,943.62
" " Other Sources.	1,992.95	2,743.11	5,567.10	5,233.73	4,902.84	2,752.65	4,640.75	59,718.16
Total Revenue...	851,038.07	874,698.62	847,649.24	865,966.94	939,297.91	1,070,463.01	1,347,223.49	1,708,661.78
Expenses:								
Manufacturing	244,982.70	232,182.68	198,661.27	244,569.63	478,148.58	644,202.43	742,689.67	1,311,417.38
Distribution	68,747.73	59,547.25	62,215.00	56,321.66	67,414.36	88,351.00	107,875.21	134,245.63
Comm. Expense.....	60,834.01	63,151.85	56,774.30	60,937.14	69,245.16	92,938.41	103,199.96	78,723.71
Gen. Expense.....	32,413.00	28,105.45	31,964.03	30,336.61	40,037.07	44,040.86	41,571.43	95,138.22
New Business.....	28,191.60	34,993.15	22,744.62	21,342.53	8,968.54	3,070.68	*20,074.17	23,409.35
Allowance for Dept....	79,247.00	81,760.00	82,818.00	84,082.00	86,190.00	88,363.00	90,068.00	97,162.00
Taxes	71,165.50	69,813.26	67,909.05	71,436.86	80,280.09	72,913.04	94,423.28	83,800.95
Total	585,581.54	569,553.64	523,086.27	569,026.43	830,292.80	1,033,879.42	1,159,753.38	1,823,897.24
Maintenance Reserve...	.....	4,284.13	11,173.85	11,004.34	*14,901.78	*22,316.31	*8,384.65	*57,741.63
Total	585,581.54	573,837.77	534,260.12	580,030.77	815,391.02	1,011,563.11	1,151,368.73	1,766,155.61
Net Earnings.....	265,456.53	300,860.85	313,389.12	286,936.17	123,906.89	58,899.90	195,854.76	*57,493.83

Year 1921.	Jany.	Feby.	March.	April.	May.	June.	July.	August.	Year en. 8-31-21.
Revenue:									
Rev. from sale of gas..	179,234.45	181,233.20	171,217.12	229,508.68	204,644.85	172,412.00	156,316.10	163,962.83	2,067,357.63
" " Other Sources.	1,572.06	2,326.86	1,805.88	312.79	*145.32	1,080.56	394.39	2,607.82	35,617.27
Total Revenue...	180,806.51	183,560.06	173,023.00	229,821.47	204,499.53	173,492.65	156,710.49	166,570.65	2,102,974.90
Expenses:									
Manufacturing	148,675.73	124,995.11	105,444.24	89,277.61	88,222.67	72,015.03	65,615.70	84,443.96	1,371,782.43
Distribution	12,967.21	10,060.92	10,451.77	12,989.67	13,696.40	15,418.38	16,722.68	14,587.71	155,516.25
Com. Expense.....	7,617.00	8,630.59	7,417.25	8,167.66	7,195.65	8,564.26	7,642.49	7,824.18	91,973.13
Gen. Expense.....	7,978.49	8,114.01	8,224.88	9,229.54	10,540.67	11,586.61	10,346.16	10,385.79	116,627.47
New Business.....	1,730.75	1,789.19	1,957.79	1,822.58	1,829.61	1,775.35	1,643.44	1,784.66	23,667.44
Allowance for Dept....	9,168.37	9,168.37	9,168.37	9,168.37	9,168.37	9,168.37	9,168.37	9,168.37	105,734.28
Taxes	11,180.00	11,180.00	11,180.00	11,180.00	11,180.00	11,180.00	11,180.00	11,180.00	117,378.64
Total	199,317.55	174,838.19	153,844.30	141,835.43	141,833.37	129,708.00	122,318.84	139,374.67	1,982,674.64
Maintenance Reserve...	*2,545.26	*13,692.12	520.91	3,065.79	*7,768.60	*2,636.15	1,509.67	*8,235.80	*71,776.32
Total	196,772.29	161,146.07	154,365.21	144,901.22	134,064.77	127,071.85	123,828.51	131,138.87	1,910,898.32
Net Earnings.....	*15,965.78	22,413.99	18,657.79	84,920.25	70,434.76	46,420.80	32,881.98	35,431.78	192,076.58

[*In red.]

Valuation Report Atlanta Gas Light Company and Georgia Railway & Electric Co., Gas Department Only.

September 30, 1921, Price Basis.

William A. Baehr, Consulting Engineer,
Peoples Gas Building,

Chicago.

228 (Copy.)

William A. Baehr, Consulting Engineer.

Combined Summary Atlanta Gas Light Company, Atlanta, Georgia, and Gas Department of the Georgia Railway & Power Company, Decatur, Georgia.

Classification.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Physical Property—Atlanta Gas Light Co.	$6,758,434	88	$5,939,176
Physical Property—Gas Department of the Georgia Railway & Electric Company	167,873	96	161,574
Total Physical Property—Sept. 30, 1921	$6,926,307	88	$6,100,750
Working Capital	425,000	100	425,000
Going Value	1,000,000	100	1,000,000
Sub-Total	$8,351,307	90	$7,525,750
Cost of Financing 8%	639,244	89	567,457
Total	$8,990,551	90	$8,093,207

General Summary Atlanta Gas Light Company, Atlanta, Georgia, Including Items of Additional Cost.

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Land	$191,374	+16.0	$222,000	100	$222,000
Transmission and Distribution	4,656,770	—18.40	3,799,800	90	3,412,261
Buildings and Miscellaneous Structures	318,888	—4.24	305,368	81	246,302
Plant Equipment	1,832,690	—9.32	1,661,903	79	1,316,653
General Equipment	68,750	+1.70	71,296	82	58,835
Paving actually Disturbed	113,202	+20.0	135,842	89	120,900
Total Physical property as of January 1, 1919	7,181,674	—13.72	6,196,209	87	5,376,951
Net additions and improvements from construction accounts.	**Without correction.**	**Correction factor.**			
Year 1919	76,966	86.1	66,248	100	66,248
Year 1920	237,329	87.6	207,924	100	207,924
9 Months 1921	309,832	93.0	288,053	100	288,053
Total Physical Property September 30, 1921	7,805,801	—23.42	6,758,434	88	6,939,176

Summary Atlanta Gas Light Company, Atlanta, Georgia, Showing Items of Additional Cost.

Classification.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Land	$185,000	100	$185,000
Items of Additional Cost 20%	37,000	100	37,000
Total	222,000	100	222,000
Transmission and Distribution	3,166,500	90	2,843,551
Items of Additional Cost 20%	633,300	90	568,710
Total	3,799,800	90	3,412,261
Buildings and Miscellaneous Structure	254,473	81	205,252
Items of Additional Cost 20%	50,895	81	41,050
Total	305,368	81	246,302
Plant Equipment	1,384,919	79	1,097,211
Items of Additional Cost 20%	276,984	79	219,442
Total	1,661,903	79	1,316,653

Summary Atlanta Gas Light Company.—Continued.

Classification.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
General Equipment	59,413	82	49,029
Items of Additional Cost 20%	11,883	82	9,806
Total	71,296	82	58,835
Paving Actually Disturbed	113,202	89	100,750
Items of Additional Cost 20%	22,640	89	20,150
Total	135,842	89	120,900
Total Physical Property	6,196,209	87	5,376,951

Detailed Summary Atlanta Gas Light Company, Atlanta, Georgia, Base Figures Only.

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Land:						
Gas Works Land Station "A"	142,619	.....	19-2	$135,000	100	$135,000
Holder Station Land Station "B"	16,859	.....	23-1411	50,000	100	50,000
Total Land	159,478	.....		185,000	100	185,000
Building and Miscellaneous Structures:						
Plant Buildings at Station "A"	233,947	.....	19-24 to 351	224,028	79	176,982
Holder Station Buildings at Station "B"	30,245	.....	23-1422 to 1444	28,963	93	26,936
Miscellaneous Buildings	1,548	.....	23-1482 to 1492	1,482	90	1,334
Total Building	265,740	—4.24		254,473	81	205,252

Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Transmission and Distribution:				
Mains—Atlanta:				
15,597 ft. of 3" Cast Iron	23-1581	$13,850	94	$13,019
590,422 " " 4" " "	23-1581	600,459	94	564,431
451,538 " " 6" " "	23-1581	603,706	94	567,484
46,534 " " 8" " "	23-1581	80,132	94	75,324
78,218 " " 10" " "	23-1581	168,716	94	158,593
53,317 " " 12" " "	23-1581	145,076	94	136,371
31,005 " " 16" " "	23-1581	122,966	94	115,588
758 " " 20" " "	23-1581	4,050	94	3,807
3,531 " " 24" " "	23-1581	25,370	94	23,848
1,215 " " 30" " "	23-1581	11,856	94	11,145
1,272,135 " " Total " "	.....	1,776.181	94	1,669,610
1,334 Ft. of 1" Steel	23-1582	607	80	486
3,813 " " 1¼" "	23-1582	1,834	80	1,467
9,500 " " 1½" "	23-1582	4,779	80	3,823
27,736 " " 2" "	23-1582	15,754	80	12,603
3,188 " " 3" "	23-1582	2,474	80	1,979

[illegible] ft. of 4" Welded Steel			23-1582	[illegible]	[illegible]	[illegible]
82,683 ft. Total Steel Mains			.....	65,937	90	59,632
1,354,818 ft. Total Mains Atlanta			.....	1,842,118	94	1,729,242
	Mains—East Point:					
23,843 ft. of 2" Welded Steel			23-1583	14,187	97	13,761
10,283 " " 3" " "			23-1583	8,391	97	8,139
12,295 " " 4" " "			23-1583	13,414	97	13,012
46,421 " Total " "			.....	35,992	97	34,912
233	Mains—College Park:					
33,727 ft. of 2" Welded Steel			23-1584	20,068	97	19,466
9,022 " " 3" " "			23-1584	7,362	97	7,141
42,749 " Total " "			.....	27,430	97	26,607
1,443,988 " Total Mains			.....	1,905,540	84	1,790,761
	Specials:	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.			
Cast Iron		$71,705	—16.0	23-1585	60,232	94	56,618
Trenching Over Specials		3,141	0.0	23-1596	3,141	94	2,953
Total Specials		74,846			63,373	94	59,571
Total Mains and Specials					1,968,913	94	1,850,332

Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Services—Atlanta:				
6 ¾" L. P. Extended Services	23-1597	97	80	78
727 1" " " "	23-1597	13,011	80	10,409
5,140 1¼" " " "	23-1597	102,641	80	82,113
18,032 1½" " " "	23-1597	397,479	80	317,983
634 2" " " "	23-1597	16,828	80	13,462
22 3" " " "	23-1597	943	80	754
4 4" " " "	23-1597	247	80	198
24,565 Total " " "	.....	531,246	80	424,997
60 ¾" H. P. Extended Services	23-1597	974	96	935
24,625 Total Extended Services Atlanta	.....	532,220	80	425,932
74 1" L. P. Stub Services	23-1598	794	80	635
116 1¼" " " "	23-1598	1,380	80	1,104
3,561 1½" " " "	23-1598	47,824	80	38,259
122 2" " " "	23-1598	1,966	80	1,573
3,873 Total " " "	.....	51,964	80	41,571

21	¾" H. P. Stub Services	23-1598	208	96	200
2	1" " " "	23-1598	21	96	20
23	Total " " "	.....	229	96	220
3,896	Total Stub Services	.....	52,193	80	41,791
28,521	Total Services—Atlanta	.....	584,413	80	467,723
	Services—East Point:				
221	¾" H. P. Extended Services	23-1599	5,053	96	4,851
54	¾" " Stub "	23-1600	418	96	401
275	Total Services East Point	.....	5,471	96	5,252
235	Services—College Park:				
213	¾" H. P. Extended Services	23-1601	4,870	96	4,675
2	1" " " "	23-1601	50	96	48
215	Total " " "	.....	4,920	96	4,723
34	¾" " Stub "	.....	263	96	252
249	Total Services College Park	.....	5,183	96	4,975
29,045	Total Services	.....	595,067	80	477,850

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Meters:				
Regular Meters in Service:				
107 3 Light Tin	23-1603	1,456	85	1,238
12,209 5 " "	23-1603	188,116	85	159,899
2,035 5 " " Type A	23-1603	33,079	85	28,117
948 10 " "	23-1604	18,747	85	15,935
282 10 " " Type A	23-1604	7,131	85	6,061
158 20 " "	23-1604	5,349	85	4,547
100 30 " "	23-1605	4,898	85	4,163
382 30 " " Type A	23-1605	23,245	85	19,758
47 45 " "	23-1605	3,405	85	2,894
20 60 " "	23-1605	1,876	85	1,595
20 100 " "	23-1606	3,108	85	2,642
3 150 " "	23-1606	685	85	582
8 150 " " Type A	23-1606	2,233	85	1,898
2 200 " "	23-1606	621	85	528
16,321 Total Regular Meters in Service	.....	293,949	85	249,857

			Prepay Meters in Service:					
14	3	Light	Tin	23-1606	250	85	219
11,936	5	"	"	23-1606	241,764	85	205,499
172	10	"	"	23-1606	4,284	85	3,641
6	20	"	"	23-1606	234	85	199
12,128	Total Prepay Meters in Service			.....	246,540	85	209,558
28,449	Total Meters in Service			.....	540,489	85	459,415
			Regular Meters in Stock:				
75	3	Light	Tin	23-1607	659	85	560
831	5	"	"	23-1607	8,742	85	7,431
50	5	"	" Type A	23-1607	568	85	483
175	10	"	"	23-1608	2,459	85	2,090
19	10	"	" Type A	23-1608	372	85	316
53	20	"	"	23-1608	1,390	85	1,182
14	30	"	"	23-1608	539	85	458
237							
10	30	Light	Tin Type A	23-1608	504	85	428
10	45	"	"	23-1609	591	85	502
12	60	"	"	23-1609	920	85	782
4	60	"	" Type A	23-1609	483	85	411
1	100	"	"	23-1609	131	85	111
1	150	"	" Type A	23-1609	251	85	213
1	200	"	"	23-1609	276	85	235
1,256	Total Regular Meters in Stock			.....	17,885	85	15,202

Detailed Summary Atlanta Gas Light Company.—Continued.

	Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
	Prepay Meters in Stock:				
13	3 Light Tin	23-1609	177	85	150
723	5 " "	23-1609	11,110	85	9,444
21	10 " "	23-1609	403	85	343
11	20 " "	23-1609	345	85	293
768	Total Prepay Meters in Stock	.....	12,035	85	10,230
2,024	Total Meters in Stock	.....	29,920	85	25,432
30,473	Total Meters	.....	570,409	85	484,847
238					
	Pressure pipes:				
67	¾" Pressure Pipes	23-1620	252	80	202
	Gas regulators:				
	Gas regulators in service, Atlanta:				
2	¾" Reynolds L. P.	23-1610	15	98	15
153	1" " "	23-1610	1,341	98	1,314

51	1¼"	"	"	.....	23-1610	545	98	534
10	1½"	"	"	.....	23-1610	127	98	124
3	2"	"	"	.....	23-1610	53	98	52
219	Total	"	"	.....	.....	2,081	98	2,039
1	¾"	Reynolds H. P.		.....	23-1610	9	98	9
44	2"	"	"	.....	23-1610	500	98	490
1	3"	"	"	.....	23-1610	16	98	16
46	Total	"	"	.....	.....	525	98	515
265	Total Regulators in Service Atlanta			.....	.....	2,606	98	2,554
	Gas Regulators in service, Eas Point:							
221	#1 Emco H. P.			.....	23-1611	2,385	98	2,337
	Gas regulators in service, College Park:							
215	#1 Emco H. P.			.....	23-1612	2,320	98	2,274
701	Total Gas Regulators in Service			.....	.....	7,311	98	7,165

	Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
	Gas Regulators in Stock:				
1	1″ Reynolds L. P.	23-1613	3	98	3
3	1½″ " "	23-1613	19	98	19
8	2″ " "	23-1613	81	98	79
12	Total " "	.....	103	98	101
39	1″ x ¾″ Reynolds H. P.	23-1613	161	98	158
51	Total Regulators in Stock	.....	264	98	259
752	Total Gas Regulators	.....	7,575	98	7,424
240	Street main governors:				
4	4″ Lloyd	23-1614	762	98	747
5	3″ "	23-1614	725	98	711
6	6″ "	23-1614	1,929	98	1,890
1	6″ Chaplin-Fulton	23-1614	321	98	315
16	Total Street Main Governors	.....	3,737	98	3,663

Drips—Atlanta:

	Drips—Atlanta:					
220	1″ L. P. Syphon	23-1615	1,429	94	1,343	
4	2″ H. P. "	.....	39	94	37	
1	3″ " "	.....	10	94	9	
17	4″ " Line	.....	327	94	307	
242	Total	.....	1,805	94	1,696	
470	Risers on L. P. Line Drips (Atlanta)	23-1617	3,046	94	2,863	
712	Total Drips in Atlanta	.....	4,851	94	4,559	
	Drips—East Point:					
13	2″ H. P. Syphon	23-1618	128	97	124	
20	2″ " Line	23-1618	277	97	269	
7	3″ " "	23-1618	116	97	113	
6	4″ " "	23-1618	115	97	112	
46	Total Drips East Point	.....	636	97	618	
	Drips—College Park:					
17	2″ H. P. Syphon	23-1619	167	97	162	
15	2″ " Line	23-1619	207	97	201	
1	3″ " Syphon	23-1619	10	97	10	
2	3″ " Line	23-1619	33	97	32	
35	Total Drips College Park	.....	417	97	405	
793	Total Drips	.....	5,904	95	5,582	

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Railway crossings:						
597 Total Street Railway Crossings.....	8,693	.....	23-1621-2	.....	..	.....
40 Total Steam Railway Crossings.....	2,305	.....	23-1623 to 1626	.....	..	.....
637 Total Crossings	10,998	0.00		10,998	94	10,338
Governor manholes:						
8 Governor Manholes	2,502	4.24	23-1627	2,396	95	2,276
Tools:						
Gas Distribution Tools	1,249	0.00	23-1631	1,249	75	937
Total Transmission and Distribution as of Jan. 1, 1919.....	3,880,642	.....	.....	3,166,500	90	2,843,551

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
Plant Equipment:					
Coal Gas Equipment at Station "A":					
5 Parker-Russell Benches of 9's (West)	20- 362	$94,203	$99,208	70	$69,446
6 " " " " 9's (East)	20- 362	113,044	119,050	60	71,430
1 Jeffrey Coal Conveyor	20- 366	7,853	5,639	75	4,229
1 20 H. P. G. E. Induction Motor	20- 376	457	475	85	404
1 20 " Westinghouse Induction Motor	20- 377	462	478	85	406
1 Jeffrey Mfg. Co. Coke Governor	20- 378	14,414	10,340	85	8,789
2 15 H. P. Westinghouse Induction Motor	20- 390	752	782	85	665
1 Bucket and Spiral Ash Conveyor	20- 392	2,649	1,340	46	616
1 Overhead Coal Bunker	20- 397	5,904	4,834	94	4,544
1 Fiddes-Aldridge Retort Stoking Machine	20- 399	32,083	37,000	50	18,500
1 Worthington Centrifugal Pump	20- 401	249	238	92	219
1 10 H. P. 3 phase G. E. Induction Motor	20- 401	413	426	92	392
1 6" x 7" x 12" Fairbanks Duplex Pump	20- 403	369	350	75	263
1 8" x 5" x 10" Ganton-Hughes Simplex Pump	20- 404	333	316	80	253
1 Size #3 Swaby Mfg. Co. Centrifugal Pump	20- 405	197	189	100	189
1 15 H. P. 3 Phase G. E. Induction Motor	20- 404	460	476	100	476
1 2000# Scale (West)	20- 407	117	107	60	64
1 4'-6" Diameter x 7'-4" Steel Tank	20- 409	335	290	80	232
1 85'-7" High Brick Stack	20- 410	2,920	2,745	80	2,196
1 G. W. Hunt Coke Car	20- 411	788	689	60	413

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
1 Brown Hoisting Mach. Co. Electric Locomotive Crane.	20- 412	8,332	7,200	85	6,120
4 20′ x 30′ x 4′ C. I. Wet Lute Purifiers	20- 413	40,124	38,413	77	29,578
1 Steam Hydraulic Elevator	20- 414	1,875	2,690	60	1,614
1 12′-0″ Diameter x 24′-9″ Ammonia Scrubber	20- 416	3,480	2,952	93	2,745
1 P. & A. Tar Extractor	20- 417	2,143	2,527	75	1,895
2 5′-0″ Diameter x 23′-0″ Hot Scrubbers	20- 418	1,284	1,270	60	762
1 8″ x 5″ x 10″ Canton-Hughes Simplex Pump	20- 419	335	320	85	272
1 Centrifugal Pump and 1 20 H. P. Sprague Induction Motor	20- 420	727	719	95	683
1 1′-10″ Diameter x 5′-6″ Concrete Seal Pot	20- 421	46	45	95	43
1 Separator in Pit South of Coal gas Purifying Box #4.	20- 422	484	474	90	427
1 Tunnell approach from retort House to Tunnell	20- 423	375	367	75	275
1 7½″ x 6″ x 9″ Clayton Simplex pump	20- 402	375	.....	..	.....
1 2000# Scale (East)	20- 408	114	.....	..	.....
243					
2 9A Wilbraham Green Exhausters with 2 10″ x 14″ New York Safety simplex Vertical Engines	20- 424	9,321	7,106	83	5,898
1 13′-0″ Maryland Station Meter	20- 425	11,005	14,369	88	12,645
1 12″ x 14″ Atlas Center Crank high Speed Engine	20- 427	3,384	2,541	75	1,906
1 Sturtevant #8 Exhauster	20- 428	1,829	1,950	75	1,463

1 Delaval Steam Turbine with 1 De Laval Centrifugal Compressor	20- 430	4,040	3,815	98	3,739
1 5" x 4" x 8" Davidson Simplex Pump	20- 432	251	238	65	155
1 24" Connelly Automatic Station Governor	20- 433	1,906	2,001	80	1,601
1 6'-0" Diameter x 25'-4" Condenser #1	20- 434	3,544	3,380	82	2,772
1 6'-0" " x 25'-4" Condenser #2	20- 436	3,569	3,406	82	2,793
1 6'-0" " x 25'-4" Condenser #3	20- 495	3,495	3,334	82	2,734
1 6'-0" " x 25'-4" Condenser #4	20- 438	3,275	3,125	82	2,563
1 Mitchell Rotary Scrubber	20- 439	8,709	8,850	85	7,523
1 6" x 10" Atlas Horizontal Engine	20- 441	852	618	80	495
Total Coal Gas and Equipment		392,876	396,682	69	274,427
Water Gas Equipment at Station "A":					
5 Coke Buggies	29- 442	3,938	.....	..	.....
1 G. E. Co. Electric Mine Locomotive	20- 443	3,197	.....	..	.....
1 Industrial Track from Conveyor to Water Gas Machine	20- 444	929	.....	..	.....
3 Cruse Kemper Circular Steel Purifiers	20- 445	27,796	24,141	90	21,727
1 6'-0" Diameter x 20'-0" Tar Scrubber	20- 448	920	878	88	773
1 P. & A. Tar Extractor	20- 449	1,736	2,048	75	1,536
1 8'-0" Diameter x 20¼-0" Oil Scrubber	20- 450	1,098	1,078	85	916
2 6'-0" " x 15'-9" Hot Scrubbers	20- 451	1,897	1,840	75	1,380
1 10 H. P. G. E. Induction Motor, with 1 Pattern Mfg. Co., Hoist #205	20- 453	641	652	75	489
2 16'-0" Diameter x 20'-4" Steel Oil Tanks	20- 455	3,070	2,675	96	2,568
1 7'-0" Diameter x 31'-6" Horizontal Light Oil Tank	20- 456	1,143	985	92	906

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
#1 12'-4" Diameter x 10'-4" Steel Oil Tank	20- 457	912	133	90	120
1 30'-0" Diameter x 20'-0" Steel Gas Oil Tank, No. 1	20- 458	5,981	4,300	92	3,956
1 30,000 Gal. 22'-6" Diameter x 10'-0" Steel Oil Tank No. 2	20- 459	1,878	1,700	87	1,479
2 6" x 4" x 6" Worthington Duplex Oil Pump	20- 461	437	413	90	372
1 Concrete Pit West of Pusher House #1	20- 462	651	637	95	605
1 Sectional Water Gas Tar Separator	20- 463	258	253	70	177
1 Brick Holder Tank	20- 464	14,295	9,935	50	4,968
1 Wilbraham Green Exhauster, Direct Connected to 1 8" x 10" Wilbraham Green Simple Vertical Engine	20- 466	2,709	2,043	75	1,532
1 De Laval Steam Turbine Direct Connected to 1 #9 Sturtevant Blower	20- 467	3,245	3,328	40	1,331
1 11" x 14" Atlas Center Crank High Speed Engine	20- 468	3,864	2,869	88	2,525
1 #9 Sturtevant Extra Heavy C. I. Blower	20- 468	1,293	1,507	88	1,326
2 125 H. P. 3 phase Sprague induction Motors, Direct Connected to	.....	.....	.....	..	.....
2 American Blower Co., Sirocco Blowers	20- 470	4,255	4,769	92	4,412
1 10" x 10" American Ball Center Crank High Speed Engine and 1 #9 Sturtevant Blower	20- 472	3,750	3,212	88	2,827
1 15'-0" American Meter Co. Station Meter	20- 473	14,422	19,039	25	4,760

2 (Error in 1919 Inventory, 12'-4" should be 2'-4", price reduced accordingly.)

1 7" x 6" x 7" Smith Vaile Duplex pump	20- 474	312	299	90	269
1 U. G. I. Water Gas Machine (No. 1)	20- 475	19,541	23,724	80	18,979
1 " Reverse Steam Water Gas Machine (No. 2)	20- 477	26,814	33,987	85	28,039
1 Two Shell Reverse Steam Water Gas Machine (No. 4)	20- 479	18,665	23,661	88	20,822
1 5" x 4" x 8" Davidson Simplex Oil Pump	20- 460	247	.....	..	.....
245					
1 U. G. I. Reverse Steam Water Gas Machine (No. 3)	20- 482	31,172	37,703	88	33,179
1 Water Gas Generator Known as Blue Gas Generator #5	20- 484	7,029	8,507	92	7,826
1 30" Connelly Automatic Station Governor	20- 486	2,798	2,938	92	2,703
1 #9A Wilbraham Green Exhauster, with 1 10" x 14" New York Safety Simple Vertical Engine	20- 487	3,931	2,979	85	2,532
1 Connersville Exhauster with 1 10" x 10" Troy Simple Vertical Steam Engine	20- 488	4,893	3,735	98	3,660
1 1'-0" Diameter x 2'-6" Oil Supply Tank	20- 489	9	7	80	6
1 0'-10" Diameter x 1'-6" Oil Feed Tank	20- 489	5	3	80	2
1 1½" x 6" Brass Plunger Pump	20- 489	5	5	80	4
Total Water Gas Equipment at Station "A"		219,836	224,983	79	178,706
Water Gas Equipment at Station "B":					
1 28'-0" Diameter x 11'-2" Steel Oil Tank	23-1445	2,534	2,160	93	2,009
Total Water Gas Equipment		222,370	227,143	80	180,715

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Sept. 30, 1921. Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
Coal and Water Gas Equipment at Station "A":					
1 4 Wheel Coke Buggy	20- 490	148	130	75	98
1 20 Ton Howe Roller Bearing Platform Scale	20- 491	917	702	95	667
1 Switch Track	20- 493	1,397	1,471	90	1,324
1 8,062 Gal. Steel R. R. Tank Car #x-102	20- 494	2,373	.....	..	.....
1 8,000 " " " " " #x-103	20- 495	2,373	2,066	60	1,240
1 8,000 " " " " " #x-104	20- 496	2,373	.....	..	.....
1 270'-0" Deep Artesian Well	20- 497	1,416	912	85	775
1 8" x 36" Laidlaw Dunn Gordon Single Vertical Deep Well Pump	20- 498	886	844	70	581
246 "					
1 12'-0" Diameter x 12'-0" Water Tank on Steel Tower	20- 499	2,170	1,848	75	1,386
1 Tar Still #14	20- 504	4,106	3,040	70	2,128
1 " " #16	20- 505	4,251	3,130	85	2,661
1 " " #20	20- 507	4,242	3,120	85	2,652
1 Tobe Rotary Pump #6 with 4 H. P. Simple Steam Engine	20- 513	357	274	95	260
1 6'-0" Diameter x 15'-0" High Tar Dehydrator, #2	20- 514	1,321	1,100	60	660
1 3'-0" Diameter x 12'-0" High Tar Dehydrator, #1	20- 519	378	307	50	154

1 Moore & White Co. Felt Saturating Machine and Tank with 1 15 H. P. G. E. Induction Motor	20- 521	2,340	2,440	60	1,464
1 6" x 10" Birmingham Iron Works Simple Horizontal Steam Engine	20- 524	1,339	866	70	606
1 No. 2 Aurora Rock Crusher	20- 524	1,762	2,132	70	.....
2 8'-0" Diameter x 27'-0" Overhead Storage Tanks for Road Binder	20- 525	4,738	3,990	95	3,791
1 10'-0" x 4'-0" x 3'-0" Condenser for Tar Stills	20- 527	407	287	60	172
1 7'-0" Diameter x 25'-0" Hydrocarbon Tank	20- 529	907	784	80	627
1 4'-0" Diameter x 10'-2" Hydrocarbon Tank	20- 530	194	169	85	144
1 16'-2" x 5'-0"-5'0" Creosote Compartment Receiving Tank	20- 531	584	494	70	346
1 8'-0" Diameter x 10'-0" Steel Tank	20- 533	735	640	85	544
1 10'-0" " x 14'-4" Brick Tar Well	20- 534	316	236	85	201
1 8'-0" x 5'-8" x 5'-0" Concrete Water Tank	20- 535	69	68	95	65
1 14'-0" x 11'-0" x 7'-0" Concrete Water Tank	20- 536	122	119	95	113
1 30'-9" x 7'-5" x 5'-0" Sectional Tar Tank	20- 537	979	820	85	697
1 2'-0" Diameter x 11'-2" Compressed Air Tank	20- 538	85	72	90	65
247					
1 3'-0" Diameter x 6'-0" Paint Mixer	20- 539	234	187	25	47
1 7'-0" Diameter x 6'-10" Creosote Storage Tank	20- 540	30	.....	..	.....
1 16'-3" x 8'-0" x 9'-0" Crude Tar Tank	20- 541	1,100	932	80	559
1 7'-0" Diameter x 19'-0" Ammonia Tank	20- 542	559	.....	..	.....
1 7'-0" Diameter x 20'-4" Ammonia Storage Tank	20- 543	607	.....	..	.....
2 10'-0" Diameter x 9'-2" Wood Ammonia Tanks	20- 544	109	109	65	71
1 2'-7" Diameter x 2'-8" Cast Iron Benzol Tank	20- 545	138	116	93	108
1 16" Diameter x 4'-3" Benzol Heating Tank	20- 546	86	64	90	58
1 3'-0" Diameter x 9'-0" Drip Oil Tank	20- 547	46	39	70	27

Detailed Summary Atlanta Gas Light Company.--Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
1 4'-9" Diameter x 2'-5" Creosote Tank	20- 548	112	98	75	74
1 6'-0" Diameter x 20'-0" " Storage Tank	20- 549	502	437	80	350
1 3'-4" Diameter x 17'-7" High Pressure Gas Tank	20- 550	312	264	98	259
2 6'-9" Diameter x 4'-4½" Paint Storage Tanks	20- 551	524	447	78	339
1 6'-9" Diameter x 4'-4" Paint Tank	20- 552	273	233	78	182
1 8'-6" Diameter x 23'-9" Tar Tank	20- 553	1,723	1,482	87	1,289
1 8'-0" Diameter x 8'-0" Steel Circulating Tank	20- 554	402	346	93	322
1 3'-0" Diameter x 12'-0" Steel Overflow tank	20- 555	192	162	90	146
1 16'-4" x 8'-0" x 3'-0" Steel Tank for Napthaline Recovery	20- 556	1,400	.....	..	.....
1 40" Tolhurst Centrifugal Naphthaline Dryer	20- 560	974	916	60	550
1 15 H. P. Westinghouse Motor	20- 561	560	564	96	541
1 6" x 6" x 10" M. T. Davidson Simplex Pump	20- 563	343	328	83	272
1 8" x 5" x 10" Canton-Hughes Simplex Pump	20- 563	352	335	83	278
1 7½" x 5" x 8" Worthington Duplex Pump	20- 564	302	290	75	218
1 6" x 4" x 6" Worthington Duplex Pump	20- 565	189	180	75	135
1 8" x 5" x 10" Canton-Hughes Simplex Pump	20- 566	332	317	88	279
1 8" x 5" x 10" " " " "	20- 566	358	342	85	291
1 14'-0" x 31'-8" x 12'-1½" Brick Ammonia Liquor Well	20- 567	1,387	1,040	85	884
1 5'-7" x 4'-6" x 3'-8" Motor Pit at S. E. Gate	20- 569	48	36	80	29

1 Pit on West Side of Coal Gas Purifiers, including Filtered Tar Well	20- 570	3,671	3,600	90	3,240
1 Pipe and Valve Pit on East Side of Pusher House	20- 571	424	.....	..	.....
248					
1 Pit between Holder and Coke Bin	20- 572	227	222	85	189
1 Concrete Trap	20- 573	99	97	90	87
1 Pit between Coal Gas Purifiers and Meter House	20- 574	4,137	3,100	85	2,635
1 Overflow Pit from Relief Holder	20- 577	513	502	85	427
1 Concrete Pit under Retort House	20- 578	151	148	90	133
1 Pit Around Artesian Well	20- 579	1,191	890	85	757
1 8" x 12" Westinghouse Locomotive Type Air Compressor	20- 580	239	285	80	228
1 42" Unger Ammonia Still	20- 581	5,387	5,856	85	4,977
1 4'-0" Diameter x 7'-0" Tank for Heating Weak Liquor	29- 582	122	105	90	95
1 6" x 4" x 6" Worthington Duplex Pump	20- 583	194	185	90	167
1 5" x 6" x 6" Marsh Air Compressor	20- 584	621	744	85	632
1 Tar Filter Press	20- 585	4,221	3,968	60	2,381
1 6" x 2" x 5" High Pressure Simplex Pot Valve Pump	20- 587	280	266	60	160
1 2" x 6" Deming Belt Driven Triplex Pump	20- 588	188	180	60	108
1 6" x 6" Single Vertical Engine	20- 589	697	443	60	266
1 6 Ton York Mfg. Co. Ice Making Machine	20- 590	11,687	15,152	95	14,394
1 3 H. P. 3 Phase G. E. Induction Motor	20- 598	139	141	92	130
1 1'-9" Diameter Grindstone	20- 599	84	79	75	59
1 #0 Sturtevant Blower	20- 599	54	59	90	53
1 24" Belt Driven Drill Press	20- 600	218	205	80	164
1 Emery Wheel C. I. Stand and 12" Diameter Grindstone	20- 601	72	68	80	54

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
1 4'-8" x 4'-8" C. I. Forge	20- 602	124	95	80	76
1 1'-0" x 2'-0" x 4-6" C. I. Tank	20- 602	21	16	93	15
1 12" Diameter x 2'-8" Steel Tank	20- 602	17	15	90	14
1 Stack over forge	20- 603	108	112	75	84
Belting, Shafting, and Pulleys in Blacksmith Shop	20- 604	234	234	80	187
1 #11 Karecki Pipe Threading Machine	20- 606	1,261	1,204	75	903
1 W. F. & G. Barnes Belt Driven Drill Press	20- 606	222	209	75	157
1 Hand Operated Elevator	20- 607	559	525	60	315
1 12" x 14" Westinghouse Locomotive Type Air Condensor	20- 580	405	.....	..	.....
249					
1 5 H. P. Westinghouse Motor	20- 608	376	389	90	350
1 Valley City Emory Wheel Stand Tool Rests and 2 Emery Wheels	20- 609	25	24	75	18
Belting, Shafting, and Pulleys in Machine Shop	20- 610	336	336	80	269
1 18" Rahn Mayer Swing Screw Cutting Engine Lathe	20- 612	1,234	1,160	88	1,021
1 16" Swing Screw Cutting Engine Lathe	20- 613	987	928	75	696
1 10 K. W. Westinghouse D. C. Generator Direct Connected to	20- 614	494	474	65	308
1 6" x 6" American Blower Co., Type A Engine	20- 614	609	378	65	246

1 Connersville Blower, Direct Connected to					
1 12" x 12" Troy Simple Vertical Steam Engine	20- 615	4,694	4,000	86	3,800
1 1'-0" Diameter x 3'-0" Oil Supply Tank	20- 616	24	21	90	19
1 0'-8" x 0'-10" x 1'-7½" Galvanized Iron Tank with 1½" x 6" Single Acting Plunger Pump	20- 616	10	9	75	7
1 Ingersoll Rand Imperial Duplex Air Compressor	20- 617	2,712	3,235	94	3,041
1 Ingersoll Rand Imperial Duplex Air Compressor	20- 618	2,712	3,235	94	3,041
1 10 K. W. G. E. 3 phase Motor with Generator	20- 620	1,004	1,020	92	938
1 8" x 5" x 10" Canton-Hughes Simplex Pump	20- 622	343	330	80	264
1 5½" x 4¾" x 5" Worthington Duplex Pump	20- 622	165	153	90	138
1 Connersville Exhauster, 16" Connections with 1 10" x 10" Troy Simple Vertical Engine	20- 623	4,038	3,062	92	2,817
1 1'-0" Diameter x 2'-8" Oil Supply Tank	20- 624	18	15	85	13
1 10" Diameter x 1'-6" Oil Feed Tank & 1 1½" x 6" Brass Plunger Pump	20- 624	8	7	85	6
250					
2 6'-0" Diameter x 23'-0" Ammonia Scrubbers #2 & #3	20- 625	1,966	1,700	85	1,445
1 Craig Ridgeway Cable Elevator	20- 626	3,866	5,657	80	4,526
2 Coal Trestles	20- 628	12,356	16,582	80	13,266
Total Coal and Water Gas Equipment at Station "A"		131,945	120,679	83	100,095

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
Coal and Water Gas Equipment at Station "B":					
1 8′-0″ x 12′-0″ x 8′-0″ Brick Oil Storage Tank	23-1446	500	375	80	300
1 A Form Derrick and Crab	23-1447	101	136	75	102
Total		601	511	79	402
Total Coal and Water Gas Equipment		132,546	121,190	83	100,497
Boiler Plant Equipment at Station "A":					
1 3′-5″ Diameter x 10′-6″ Hoppe Open Feed Water Heater	20- 635	905	958	80	766
1 3′-0″ Diameter x 10′-1″ Hot Water Tank	20- 635	213	174	80	139
1 6′-4″ Diameter x 5′-0″ Steel Tank	20- 636	212	164	85	139
1 7″ x 4½″ x 10″ Smith Vaile Duplex Plunger Pump	20- 637	384	366	83	304
1 7″ x 4½″ x 10″ Pratt Iron Works Duplex Plunger Pump	20- 638	391	369	83	306
1 12″ x 7″ x 12″ Worthington Duplex Plunger Pump	20- 639	810	770	80	616
1 Phoenix Iron Works, Return Tube Boiler	20- 640	5,814	4,380	70	3,066
251					
3 150 H. P. Phoenix Iron Works Tubular Boilers	20- 641	20,176	16,059	76	12,207
1 150 H. P. R. D. Cole Tubular Boiler	20- 642	7,074	5,350	98	5,243

3 3'-0" Diameter x 80'-0" Steel Stacks with Boiler Breechings	20- 645	2,035	1,760	70	1,232
1 3'-0" Diameter x 80'-0" Steel Stack with Boiler Breeching	20- 645	678	587	80	470
1 3'-0" Diameter x 78'-9" Steel Stack with Boiler Breeching	20- 646	1,055	913	95	867
Total Boiler Plant Equipment at Station "A"..		39,747	31,850	80	25,355
Boiler Plant Equipment at Station "B":					
1T. M. Nagle Fire Tubular Boiler	23-1448	1,166	850	70	595
1 1'-6" Diameter x 20'-0" Steel Stack	23-1448	77	66	70	46
Total Boiler Plant Equipment at Station "B" ...		1,243	916	70	641
Total Boiler Plant Equipment		40,990	32,766	79	25,996
Holders and Accessories at Station "A":					
1 380,000 Cubic feet 2 lift Brick Tank Holder	20- 648	88,917	68,042	50	34,021
Holders and Accessories at Station "B":					
1 1,444,000 Cubic feet 3 lift Steel Tank Holder, Known as #4	23-1450	184,578	157,118	92	144,549

Detailed Summary Atlanta Gas Light Company.—Continued.

Classification.	Cross reference, page No.	Jan. 1, 1919. Cost of reproduction new.	Sept. 30, 1921. Cost of reproduction new.	Condition, %.	Sept. 30, 1921. Cost of reproduction new less depreciation.
1 2,000,000 Cubic feet 4 lift Steel Tank Holder	23-1451	261,246	221,806	96	212,934
2 6" x 4" x 6" Worthington Duplex Pumps	23-1452	618	576	85	490
1 5¼" x 4¾" x 5" Worthington Simplex Pump	23-1453	156	148	85	126
Total Holders and Accessories at Station "B"		446,598	379,648	94	358,099
Total Holders and Accessories		535,515	447,690	91	392,120
Piping, Wiring and Miscellaneous:					
Building Piping Station "A"	21- 652 to 881	19,945	13,882	77	10,688
Blast Piping, Works Mains and Miscellaneous Piping	21- 919 to 988	156,621	122,478	77	94,308
Piping Station "B"	23-1454	10,032	7,845	92	7,217
Total Piping		186,598	144,205	78	112,213
Wiring Station "A"	22-1276 to 1322	5,343	3,046	77	2,345

Miscellaneous Equipment at Station "A":					
Furniture and Fixtures	22-1359	6,216	7,409	70	5,186
Fire Apparatus	22-1394	734	734	90	661
Laboratory Equipment	22-1395	1,492	1,492	80	1,194
253					
First Aid Equipment	22-1399	319	319	90	287
Tools	22-1400	2,243	2,243	70	1,570
Total Miscellaneous		11,004	12,197	73	8,898
Total Piping Wiring and Miscellaneous		202,945	159,448	77	123,456
Total Plant Equipment at Station "A" and Station "B"		1,527,242	1,384,919	79	1,097,211

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
General Equipment:					
Utility Equipment	$34,506	0.0	$34,506	80	$27,605
General Office Equipment:					
Furniture & Fixtures in the A. B. & A. Building	1,307	+19.2	1,558	90	1,402
Furniture & [illegible]s in the E. & G. Building	3,772	+19.2	4,496	90	4,046
Total General Office Equipment	5,079	....	6,054	90	5,448
Shop Equipment in South Storehouse	7,692	0.0	7,692	87	6,692
Miscellaneous Shop Equipment:					
Furniture & Fixtures	5,967	+19.2	7,113	85	6,046
Tools	4,048	0.0	4,048	80	3,238
Total Miscellaneous Equipment	10,015	....	11,161	83	9,284
Total General Equipment	57,292	....	58,413	..	49,029

General Summary Georgia Railway and Electric Company, Gas Department, Decatur, Georgia, Including Items of Additional Cost.

Classification.	Cost of reproduction new as of Jan. 1, 1919.	Per cent increase or decrease since Jan. 1, 1919.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Transmission and Distribution	$151,751	—17.35	$125,460	96	$120,244
General Equipment	835	+19.2	996	85	847
Paving Actually Disturbed	19,454	+20.0	23,345	96	22,411
Total Physical Property as of Jan. 1, 1919	172,040	87	149,801	96	143,502
Net additions and improvements from construction accounts.	**Without correction.**	**Correction factor.**			
Year 1919	6,289	86.8	5,461	100	5,461
" 1920	8,053	87.0	7,004	100	7,004
9 Months 1921	6,075	92.3	5,607	100	5,607
Total Physical Property Sept. 30, 1921	192,457	87	167,873	96	161,574

Summary Georgia Railway and Electric Company, Gas Department, Decatur, Georgia, Showing Items of Additional Cost.

Classification.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Transmission and Distribution	$104,550	96	$100,203
Items of Additional Cost 20%	20,910	96	20,041
Total	125,460	96	120,244
General Equipment	830	85	706
Items of Additional Cost 20%	166	85	141
Total	996	85	847
Paving Actually Disturbed	19,554	96	18,676
Items of Additional Cost 20%	3,891	96	3,735
Total	23,345	96	22,411
Total Physical Property	149,801	96	143,502

Detailed Summary Georgia Railway and Electric Company, Gas Department, Decatur, Georgia, Base Figures Only.

Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
Transmission and Distribution:				
Mains:				
20,016 ft. of 4" Cast Iron	18-7199	$20,356	97	$19,745
10,945 " " 6" " "	18-7199	14,633	97	14,194
1,633 " " 10" " "	18-7199	3,522	97	3,416
32,594 " Total	.....	38,511	97	37,355
45,685 ft. of 2" Steel	18-7200	25,949	95	24,652
78,279 ft. Total Mains	.....	64.460	96	62,007
Specials:				
Cast Iron	18-7201	1,694	97	1,643
Trenching Over Specials	18-7202	38	97	37
Total	.....	1,732	97	1,680
Total Mains and Specials	.....	66,192	96	63,687

Detailed Summary Georgia Railway and Electric Co.—Continued.

	Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
	Meters:				
	Regular Meters in Service:				
414	5 Light Tin	18-7203	6,379	95	6,060
15	10 " "	18-7203	297	95	282
2	30 " "	18-7203	98	95	93
431	Total	.....	6,774	95	6,435
258	Prepay Meters in Service:				
253	5 Light Tin	18-7203	5,125	95	4,869
684	Total Meters in Service	.....	11,899	95	11,304
	Regular Meters in Stock:				
36	5 Light Tin	18-7204	379	95	360
3	10 " "	18-7204	42	95	40
1	30 " "	18-7204	39	95	37
40	Total	.....	460	95	437

	Prepay Meters in Stock:				
31	5 Light Tin	18-7204	476	95	452
71	Total Meters in Stock	.....	936	95	889
755	Total Meters	.....	12,835	95	12,193
	Gas Regulators in Service				
611	#2 Reynolds High Pressure Regulators with Mercury Seals	18-7205	6,944	96	6,666
	Services:				
662	1" Extended Services	18-7206	16,622	95	15,791
140	1" Stub Services	18-7207	1,175	95	1,116
802	Total Services	.....	17,797	95	16,907
259	Drips:				
5	1" L. P. Syphon	18-7208	32	96	31
55	2" H. P. "	18-7209	542	96	520
1	2" " Line	18-7209	14	96	13
30	L. P. Drip Risers	18-7210	194	96	186
91	Total	.....	782	96	750
	Total Transmission and Distribution	.....	104,550	96	100,203

Detailed Summary Georgia Railway and Electric Co.—Continued.

Classification.	Cross reference, page No.	Sept. 30, 1921, price basis. Cost of reproduction new.	Condition, %.	Cost of reproduction new less depreciation.
260 General Equipment:				
Furniture and Fixtures in General Office Decatur, Georgia—Proportion to Gas Dept.	18-7195	830	85	706
Increase over Jan. 1, 1919 prices = 19.2%.				
Paving Actually Disturbed:				
41,279 Ft. of Paving Over Mains	18-7211	15,827	96	15,194
386 Extented Services Under Paving	18-7213	2,372	96	2,277
132 Stub Services Under Paving	18-7214	1,082	96	1,039
63 Drip Pipes Under Paving	18-7215	173	96	166
		19,454	96	18,676

261 William A. Baehr, Consulting Engineer.

Georgia Railway and Power Company.

Gas Department.

Working Capital as of September 27, 1921.

Materials and Supplies from Company Report for Aug. 31, 1921.

Gas Works	$2,593.04	
Decatur Street Gas	64,103.57	
Gas Sundry Sales, E. & G. Gas Bldg	3,210.51	
Purification Supplies	5,848.32	
Enricher Coal Gas Stock	1,150.40	
Boiler Fuel Stock Gas	566.62	
Gas Stock	1,268.75	
Gas Main Dept	11,550.39	
Ammoniacal Liquor	1,043.75	
Crude Tar	10,133.85	
Estimated (60 Days' Supply).		
Gas Coal 7,845.82 tons @ $5.51	43,230.47	
Gas Oil 581,350 gal. @ .075	43,601.25	
Generator and Bench Fuel (Coke) 3,386.8 tons @ $7.00	23,707.60	
Steam Coal 428.15 tons @ $3.91	1,664.07	
Breeze (Boiler Fuel) 1,300.7 tons @ $4.00	5,202.80	
Total Materials and supplies		$218,875.39
Average Cash Requirements (1/10 Gross Rev.) 1½ mos. Operating Expense		206,631.07
		$425,506.46
Use		$425,000.00

262 William A. Baehr, Consulting Engineer.

Georgia Railway & Power Company.

Gas Department.

Going Value.

Gross Revenue Method:

Yearly Gross Revenue Based on Last eight months	$2,202,727

Cost per consumer method:

32,248 Consumers @ $30.00 per consumer	967,440

Percentage of physical property method:	
20% of Reproduction Costs of Physical Property.....	1,385,2
Accrued depreciation method:	
$6,926,307 — $6,100,750	825,5
Total.....	$5,380,9
Average	1,345,2
Use	1,000,0

263 EXHIBIT No. 27.

Copy.

Parsons, Klapp, Brinckerhoff & Douglas,

Engineers.

Appraisal of Gas Plant & System of the Georgia Railway & Pow Company as of September 30, 1921.

Compiled by

H. N. Brinckerhoff, a Partner, & R. U. Fitting, Gas Engineer,

of the Firm of

Parsons, Klapp, Brinckerhoff & Douglas,

Consulting Engineers, of 84 Pine St., New York.

Appraisal of Physical Property.

The inventory of this property, prepared by A. J. Luick a Gordon Cavanagh of William A. Baird's Staff, has been examin and Compared in its principal items by our own inspection in t field. This has been done mainly as part of the work now in progr of making a complete appraisal of all the departments of the Georg Railway & Power Company's properties. These tests checks havi Disclosed no errors, the inventory as a whole has been used.

The Land Values used by us are those vouched for by Forre Adair, Real Estate Expert.

The reproduction cost of the transmission and distribution syste which constitutes the largest single group of items, involving abo four million dollars has been separately appraised by us. W
264 have taken the total inventory of this group as of today to b the sum of the January 1st, 1919, inventory of Baehr (Luic & Cavannagh), together with the items added since that date as show by the Company's Construction records.

In the large item of Gas Meters, etc., (about $700,000), we have used our own inventory figures taken from the Company's operating records.

This completed present inventory we have priced at unit prices proper for this date and locality and find the reproduction cost of the properties thus derived checks quite closely with the corresponding figure derived in a different manner by Luick & Cavanagh.

Buildings and Miscellaneous structures have been inspected in the field and priced in a similar manner.

Plant equipment and General equipment have been checked and determined by the same method.

Paving actually disturbed is an item requiring an extended investigation of Company and City paving records. We have scrutinized the methods pursued by Luick & Cavanagh and have approved their findings as reasonable and the pricing fair. In our own compilation, however, this item is included in the item Transmission & Distribution System and comes therefore in part from our own investigation of the Company's records.

The following condensed tabulation herewith shown is part of the complete valuation we are in course of preparing for Drexel & Company, Bankers of Philadelphia:

265 *Summary of Value Gas Properties of the Georgia Railway & Power Company in Atlanta & Decatur.*

Classified item.	Reproduction cost new.	Condition, per cent.	Reproduction cost less depreciation.
Land	$222,000	100	$222,000
Transmission & Distribution System	4,166,529	90	3,749,876
Buildings & Miscellaneous Structures	322,486	81	261,212
Plant Equipment	1,934,213	79	1,528,028
General Equipment	125,757	82	103,120
	6,770,985	....	5,864,236
Decatur System	167,873	87	161,574
	6,938,858	....	6,025,810
Working Capital	418,443	....	418,443
Going Concern Value	700,000	....	700,000
	8,057,301	88.6	7,144.253

The above totals do not include Franchise Value or Cost of Financing.

266 EXHIBIT No. 28.

Report of Calls Made by Greater Service Dept., Sept. 15th to October 29th, 1921.

Total calls made by representatives	4,78
Calls where customers could not be interviewed	70
Net calls made	4,07
Customers reporting trouble with gas service	22
Customers requesting adjustment of their gas appliances	64
Customers expressing themselves satisfied with the Company's gas service	3,95

267 EXHIBIT No. 28.

Record of Gas Service Conditions as Reported by Meter Rereaders June to October, 1921.

	Total gas meters reread.	Customers reporting gas service good.	Customers reporting trouble with their appliances or with their service.
June	701	677	24
July	498	489	9
August	360	359	1
September	351	348	3

268 *Report of Written Complaints Received on Gas and Electric Service, February 1, 1921, to Nov. 1, 1921.*

	Total Letters Received.
February	28
March	12
April	6
May	20
June	13
July	6
August	4
September	6

NOTE.—The above letters covered complaints on gas service electric light service, and electric power service.

Analysis of Written Complaints Received in October 1912.

Total Letters Received, 68.

Letters covering gas complaints	45
Letters covering both gas & elec. complts	12
Letters covering elec. complaints	9
Letters covering gas leaks	2
	68

Report on Gas Meters Tested on Written Complaint.

Total Number Tested, 12.

Number testing slow	8
Number testing fast	0
Number testing O. K	4
	12

289 *Report of Gas Meters Tested,* 1921.

Month.	Number meters tested.	Non-register meters.	Absolutely correcy.	Testing fast.	Testing slow.
January	2,732	162	2,350	28	192
February	2,130	97	1,663	76	294
March	2,671	84	1,698	153	736
April	2,959	53	1,796	203	907
May	2,714	114	1,699	285	616
June	3,007	106	2,215	172	514
July	3,445	55	2,523	355	512
August	2,791	114	1,758	242	677
September	2,364	189	1,506	296	373
Total	24,813	974	17,208	1,810	4,821

Statement of Gas Rates in Effect in Southern Cities, Every City in Southern States with a Population of 10,000 *or More Being Listed.*

Rates in Effect September 1st, 1921.

	Population.	Net rate charged for 1st 1,000 cu. ft.	Plus service or meter rental charge.	Total rate or charge paid, first 1,000 cu. ft.	Remarks.
Alabama:					
Birmingham (R)	178,270	.85	..	$.85	Flat rate. No sliding scale. By-product gas purchased from coke oven plants at 16½¢ per 1,000 cu. ft.
Mobile	60,151	1.80	..	1.80	First 10,000 cu. ft. gas.
Montgomery (R)	43,464	2.00	..	2.00	"
Anniston	17,734	1.50	..	1.50	For all gas.
Bessemer (r)	18,674	1.50	..	1.50	By-product gas.
Dothan	10,034	....	..	....	No data received.
Florence	10,529	2.20	..	2.20	For all gas.
Gadsden	14,737	1.80	..	1.80	"
Selma	15,589	2.00	..	2.00	"
Tuscaloosa	11,996	1.20	..	1.20	By-product gas purchased from coke ovens at 15¢ per 1,000 cu. ft.

Florida:					
Jacksonville	91,558	1.75	..	1.75	First 10,000 cu. ft. gas.
Miami (r)	29,549	1.90	..	1.90	For all gas.
Pensacola	31,035	1.90	..	1.90	"
Tampa	51,253	2.03	..	2.03	First 20,000 cu. ft. gas.
Key West	18,749	1.90	..	1.90	For all gas.
St. Petersburg (M)	14,237	1.50	..	1.50	"

Statement of Gas Rates in Effect in Southern Cities.—Continued.

	Population.	(1).	(2).	(3).	(4).
271 Kentucky:					
Covington	57,121	.45	..	.45	Natural gas.
Lexington	41,534	.40	..	.40	"
Louisville	234,891	.72	..	.72	"
Newport	29,317	.45	..	.45	"
Ashland	14,729	.35	..	.35	"
Henderson	12,169	....	..	....	No data received.
Owensboro	17,424	1.40	..	1.40	All gas. Suit now pending in court for higher rates.
Paducah	24,735	1.60	..	1.60	First 10,000 cu. ft.
Louisiana:					
New Orleans	387,219	1.60	..	1.60	First 10,000 cu. ft. Straight meters 15¢ less.
Shreveport	43,874	.25	..	.25	Natural gas.
Alexandria	17,510	....	..	....	No data received.
Baton Rouge	21,782	2.25	..	2.25	2,000 cu. ft. $2.25; 4,000 cu. ft. $2.15.
Lake Charles	13,068	1.40	..	1.40	First 5,000 cu. ft.
Monroe	12,675	.30	..	.30	Natural gas.
Mississippi:					
Biloxi	10,937	1.90	..	1.90	First 10,000 cu. ft. rate fixed by federal court.
Columbus	19,591	2.00	..	2.00	First 5,000 cu. ft.

Greenville	11,500	1.90	..	1.90	For all gas.
Hattiesburg	13,270	2.00	..	2.00	"
Jackson	22,817	1.75	.50	2.25	"
Laurel	13,037	....	..	....	Gas plant has discontinued service.
Meridian	23,889	1.98	.75	2.73	For all gas. Rates ordered into effect by Federal court.
Natchez	12,608	2.50	..	2.50	First 5,000 cu. ft.
Vicksburg	17,931	1.80	.50	2.30	1.80 first 1,000 of; 1.75 next 2,000 of; 1.70 next 2,000 of.
272 North Carolina:					
Ashville	28,504	$1.60	..	$1.60	For all gas. N. C. Commission has recently authorized rate $2.30 per 1,000 cu. ft. Case now in court.
Charlotte	46,338	1.80	..	1.80	First 10,000 cu. ft.
Wilmington	33,372	2.00	..	2.00	"
Winston-Salem	43,395	1.90	..	1.90	"
Durham	21,719	1.90	..	1.90	"
Gastonia	12,871	2.40	..	2.40	For all gas.
Goldsboro	11,296	2.30	..	2.30	First 10,000 cu. ft.
Greensboro	19,861	1.90	..	1.90	"
High Point	14,302	2.05	..	2.05	"
Newbern	12,198	2.30	..	2.30	"
Raleigh	24,418	1.90	..	1.90	"
Rocky Mount (m)	12,742	1.90	..	1.90	First 15,000 cu. ft.
Salisbury	13,384	2.05	..	2.05	First 10,000 cu. ft.
Wilson (m)	10,613	2.00	..	2.00	First 5,000 cu. ft.

Statement of Gas Rates in Effect in Southern Cities.—Continued.

	Population.	(1).	(2).	(3).	(4).
South Carolina:					
Charleston	67,957	1.55	..	1.55	For all gas.
Columbia	37,524	1.75	..	1.75	2,500 cu. ft. 1.75; 2,500 cu. ft. 1.70.
Anderson	10,570	2.40	..	2.40	First 5,000 cu. ft.
Florence	10,968	1.90	..	1.90	For all gas.
Greenville	23,127	2.00	..	2.00	"
Spartanburg (R)	22,638	1.90	..	1.90	First 5,000 cu. ft.
Tennessee:					
Chattanooga	57,895	1.80	.50	2.30	For all gas.
Knoxville	77,818	1.80	.50	2.30	"
Memphis (r)	162,351	1.35	..	1.35	See Note below.
Nashville	118,342	1.80	.50	2.30	For all gas.
Jackson	18,860	1.75	.50	2.25	"
Johnson City	12,442	1.90	..	1.90	"
273 Virginia:					
Lynchburg	29,956	$1.60	..	$1.60	First 10,000 cu. ft.
Newport News	35,596	1.35	..	1.35	First 5,000 cu. ft.
Norfolk	115,777	1.35	..	1.35	"
Petersburg	31,002	2.00	..	2.00	First 5,000 cu. ft. Rates fixed by Va. Courts.
Portsmouth	54,387	1.50	..	1.50	For all gas.
Richmond (r)	171,667	1.20	..	1.20	"

Roanoke	50,842	1.50	..	1.50	First 5,000 cu. ft.
Alexandria (m)	18,060	1.80	..	1.80	For all gas.
Charlottesville (M)	10,088	1.50	..	1.50	"
Danville (m)	21,539	1.20	..	1.20	"
Staunton	10,623	2.25	..	2.25	First 10,000 cu. ft.
Georgia:					
Atlanta	200,616	1.65	..	1.65	First 10,000 cu. ft.
College Park, Decatur—East Point	.....	1.75	..	1.75	For all gas.
Augusta	52,548	1.90	..	1.90	First 20,000 cu. ft.
Americus	9,010	1.90	..	1.90	For all gas.
Savannah	63,252	1.60	..	1.60	First 10,000 cu. ft.
Columbus	31,125	1.75	..	1.75	"
Macon	52,995	1.75	..	1.75	"
Waycross	18,068	2.00	..	2.00	For all gas.
Rome	13,252	1.40	..	1.40	"
Griffin	8,240	1.90	..	1.90	First 5,000 cu. ft.
Valdosta	10,783	2.00	..	2.00	For all gas.
Brunswick	14,413	1.90	..	1.90	"
Athens	16,748	1.90	..	1.90	First 5,000 cu. ft.
La Grange (m)	17,038	1.80	..	1.80	For all gas.

1. Net Rate charged for 1st 1,000 cu. ft. of gas.
2. Plus service or meter rental charge.
3. Total rate or charge paid for first 1,000 cu. ft. of gas.
4. Remarks.

m. Municipal plant.
r. Receivership.

274 All the above rates apply as of September 1st, 1921, except for the cities of Tuscaloosa, Ala., Tampa, Fla. and Columbia, S. C.—the rates shown for such cities being as of March 1st, 1921. We have been unable to receive from the city authorities of such cities the present rates, but presume that there has been no change since March 1st.

Memphis (note).—The Tennessee Commission fixed the gas rate at Memphis, Tenn. at $1.35 per 1,000 cu. ft., which was a reduction from $1.75, agreed upon between the company and the city, upon the following grounds, as stated in the Commission's opinion, dated February 8th, 1921:

"While it is frequently contended that where dual utilities are operated by a single agency, rates should be so adjusted as to make each department bear its full proportion of the expenses, this Commission, in the exercise of its judgment and discretion declines to adopt that view in this case, and hold- to the adjustment of rates for this utility hereinafter set out."

(The electric light and power rates were therefore arbitrarily left higher than a presumably reasonable return upon the electric property considered separately.)

275 Summary.

Total number of cities above reported	9
Within which, total number of cities operating municipal plants	5
Number of cities supplies with natural gas or by-product gas	10
Number of cities in which companies are now in hands of receivers	6
Leaving number of cities, within which privately owned companies furnish artificial gas	73

Of such total number of cities (73) the following have rates as high or higher than Atlanta:

Mobile, Ala.	Meridian, Miss.
Florence, Ala.	Natchez, Miss.
Montgomery, Ala.	Vicksburg, Miss.
Gadsden, Ala.	Charlotte, N. C.
Selma, Ala.	Wilmington, N. C.
Jacksonville, Fla.	Winston-Salem, N. C.
Miami, Fla.	Durham, N. C.
Pensacola, Fla.	Gastonia, N. C.
Tampa, Fla.	Goldsboro, N. C.
Key West, Fla.	Greensboro, N. C.
Baton Rouge, La.	High Point, N. C.
Biloxi, Miss.	Newbern, N. C.
Columbus, Miss.	Raleigh, N. C.
Greenville, Miss.	Salisbury, N. C.
Hattiesburg, Miss.	Columbia, S. C.
Jackson, Miss.	Anderson, S. C.

Florence, S. C.	Augusta, Ga.
Greenville, S. C.	Americus, Ga.
Spartanburg, S. C.	Columbus, Ga.
Chattanooga, Tenn.	Macon, Ga.
Knoxville, Tenn.	Waycross, Ga.
Nashville, Tenn.	Griffin, Ga.
Jackson, Tenn.	Valdosta, Ga.
Johnson City, Tenn.	Brunswick, Ga.
Petersburg, Va.	Athens, Ga.
Staunton, Va.	

Of such (73 cities) the following have rates as low as Atlanta:

Anniston, Ala.	Lynchburg, Va.
New Orleans, La.	Portsmouth, Va.
Memphis, Tenn.	Rome, Ga.
Norfolk, Va.	Paducah, Ky.
Savannah, Ga.	Charleston, S. C.
Owensboro, Ky.	Newport News, Va.
Lake Charles, La.	Roanoke, Va.

276 EXHIBIT No. 30.

Appraisal of Atlanta Gas Light Company as Reported by H. M. Brinckerhoff to the Bankers as of January 1, 1914.

Appraisal of 1914:

Reproduction cost *of* new	$3,897,992
Physical condition 89.2%	
Reproduction cost less depreciation	$3,477,009
Working Capital, 1914	195,163
Going Value	528,916
Fair Value 1914	$4,201,088

EXHIBIT No. 31.

Georgia Railway and Power Company and Leased and Subsidiary Companies.

Gross Operating Revenue, Operating Expenses, Net Income, etc.

The Depreciation and the Return are based on the values fixed by the Railroad Commission of Georgia; viz.: Georgia Railway and Power Company and Georgia Railway and Electric Company as at April 30, 1920; Atlanta Gas Light Company as at December 31, 1920, and the Atlanta Northern Railway Company as at December 31, 1917, and adjusted for each of the years according to the expenditures for additions to the properties.

Account.	Year 1920.	Year 1919.	Year 1918.	Year 1917.
Gross Revenue	$13,216,286.96	$10,732,284.94	$8,997,309.46	$7,996,309.99
Operating Expenses	8,322,494.85	6,171,247.63	5,262,341.93	4,317,404.45
	$4,893,792.11	$4,561,037.31	$3,734,967.53	$3,678,905.54
Taxes	776,633.53	732,838.43	589,627.76	574,037.72
	4,117,158.58	$3,828,198.88	$3,145,339.77	$3,104,867.82
Less Depreciation at 2½%	1,039,320.59	1,001,095.65	957,198.81	904,800.53
Net after Depreciation	$3,077,837.99	$2,827,103.23	$2,188,140.96	$2,200,067.29
To yield a return of eight (8%) per cent on value named by R. R. Commission and adjusted for additions the Net should be	$3,737,537.89	$3,607,484.83	$3,445,767.97	$3,253,835.22
Gain (black) Loss (red)	[$659,699.90]*	[$780,381.60]*	[$1,257,627.01]*	[$1,053,767.03]*
Accumulated deficit for the four years				[$3,751,476.44]*

[*Red in copy.]

78 Complainants introduced the report made to the Railroad Commission of Georgia by Professor Henry Earle Riggs, nder date of April 27th, 1921, the material portions of which are follows.

In conformity with your request that I make an examination of ll available data as to the property of the Georgia Railway and ower Company used in the manufacture of Gas in Atlanta and icinity, and that I report my opinion also the minimum valuation gure which should be used as a basis for rate making, the probable Fair Value" of the property, and such facts as to operating costs, ost of construction and general conditions of maintenance of the roperty as you should have before you in reaching a decision in this ase, I submit the following;

Have had access to the plant and property and been afforded every acility for examining the statistical and accounting reports of the ompany and all of the valuation reports made for the Company by V. A. Baehr of Chicago and Mr. A. J. Luick, of Chicago. Have ad access to the Commission's complete files of testimony and exibits. I have not only been furnished with all of the informaion placed before the Commission, but have had much data which as not been put in evidence.

In the limited time given me to submit this report no detailed hecking of the inventory or making of an independent valuation as been possible. That is the work of several months with a large taff of men. What I have attempted to do is to make a general heck of the inventory of equipment at the Gas Works as would show he reliability of the estimates of the manufacturing plant, to make eneral comparisions with works in other Cities to assure myself f no excess amount of mains or consumer's services is reported and to est out unit prices used against those which have been used by myself nd my associates in other appraisals.

These have been done and I am satisfied fully as to the following oints.

First. The inventory of the property was made about two years go as of Jany. 1st, 1919. It was undoubtedly accurate at that time.

279 A new inventory made now would disclose some abandonment and replacement and some changes of property, but no material change in figures would result from such an inventory ver those made on the two years old inventory plus net additions to he plant. The Atlanta plant shows numerous replacements and nuch work is at present under construction. The inventory comprises nearly seventeen hundred pages of details, accompanied by naps, drawings and photographs and is in most satisfactory form.

Second. The unit prices used by Messrs. Baehr and Luick are ccurate as of the date used. I have checked many prices on the arious basis used and find that they agree within from 1% to 3% f my own prices used on other appraisals.

Third. Mr. Baehr and Mr. Luick have used 20% overhead as gainst the various overhead used by me which average about 17%.

Fourth. These details, physical inventories and these estima
as of various dates made by Mr. Baehr and Mr. Luick form a corr
basis for making the computations required in this case; I am sat
fied that no material difference in figures would result if your co
mission placed a force of men on an investigation lasting seve
months.

The Uncertainty of the Valuation Problem.

It would seem to be unnecessary to call attention to the extrem
wide range of claims made by engineers and accountants, and
the great lack of unaminity on the part of Courts and regulati
commissions as to the proper measure of "Fair Value," as that te
has been used by the Courts.

Prior to the War it was generally recognized that actual inve
ment, in the case of new properties, or reproduction cost less actu
depreciation in the case of properties for which investments could n
be obtained, constituted a proper basis. Reproduction was general
computed upon a five or ten year average of prices, and proper
made, a reproduction estimate before the War did, fairly well, a
proximate the figure of actual historical cost.

The violent rise in prices during the War and since the end
the War has brought about a change, and it seems to be impossib
to escape the conclusion that the Courts are accepting the e
280 treme basis of reproduction cost at the date of appraisal. T
various State Commissions are attempting to adopt a mu
lower figure, either based on five or ten year averages or a compos
figure approximating investment.

If we were to base our conclusions on recent Court decisions i
New York, Illinois and Missouri Federal Courts, we would be co
pelled to use a reproduction figure as of 1921.

I am not in harmony with the apparent conclusions of the Judg
who have handed down decisions in these cases, but argue for a mo
permanent basis of valuation. The making of a valuation of a utili
property made up by thousands of Units of different kinds and
different lengths of life, is not only a most costly proceeding, b
it is highly unsatisfactory at best. Hundreds of thousands of dolla
are invested in property which cannot be inspected and examine
like pipe buried underground, costly foundations and other li
items. Many more thousands of dollars are in comparatively sm
and widely scattered units, such as meters, that they cannot be e
amined in a satisfactory manner. Thus it would appear that o
careful valuation, used as a basis, and kept up to date, by accura
accounting for additions and replacements would form a better ba
for rates than the making of a new valuation every time a change
rates was desired.

Likewise it would seem to be perfectly fair to use such a valuati
as would represent the actual reasonable investment.

It is argued that the value of a dollar has gone down, and that t
dollar of 1921 is worth about half as much as the dollar of 191
Hence to pay a return on the 1914 valuation in depreciated dolla

is unfair to the owner of the utility. If this argument were not accompained by the argument that interest rates and rates of return and cost of money had risen in recent years, it would be more sound. W. G. Raymond in a recent paper puts it thus, "What must happen is that I must have as many bushels of potatoes, if potatoes are my diet, for my rentals as I did before money became cheap. If potatoes now cost twice as much as they did, I must have either twice the rate of returns on my investment, or the same rate of return on an arbitrarily increased investment value. But I do not need
281 both twice the investment value and twice the old rate of return on this inflated value."

It does not appear to me fair to use a valuation that would fully represent that part of the total investment which is actually in use furnishing service to the Public and to adjust the rate of return to meet the var-ing business conditions of the Country. In this way investments made to meet the expansion of business in the community under stress of war time conditions, such as we have passed through, would receive full recognition, and if the rate of return be at all times fixed at such a figure as would enable the Company to attract new money needed to make extensions to permit it to keep up with the growth of the Community, full justice would be done.

We cannot get away from these facts; That our present day civil-zation must have the services rendered by these utilities, that we can build them with the money of the tax payers or as private enterprise; that if they are to render satisfactory service they must grow just as fast as the community they serve, and that means a constantly increasing investment, and that if private capital is to go into regulated utilities, there must be the reasonable assurance of a fair rate of return on the investment and a repayment of the money invested or a guarantee of the integrity of the investment through proper allowance for replacement of property when it is worn out.

I will attempt to make clear my own conclusion as to the minimum figure, which may be termed the investment basis, as derived from a study of the data in this case, and will also attempt to indicate the figure which may be taken as "Fair Value," as Courts and Commissions construe it.

The Atlanta Gas Plant.

It is not necessary to attempt a detailed description of the property. It is sufficient to say that the generating station is a coal and water gas plant, with eleven benches of nine through retorts and at the present time five water gas machines. Changes are being
282 made which will permit a large increase in water-gas capacity.

The Plant is equipped with an exceptionally good mechanical coal handling plant, with all of the necessary auxiliary equipment for the proper handling of the business.

Gas is sent out of the Plant at high, intermediate and low pressure and with the completion of the work now in progress, the installation of the compressors, pushers and additional water-gas apparatus, the Plant should be in good shape to render most satisfactory service.

There are two large holders, one of two million cubic feet and one of one million one hundred and forty four thousand cubic feet and one small holder of three hundred and eighty thousand cubic feet capacity.

There is shown on the inventory 1,452,134 feet of street mains of various sizes, or 275.20 miles. There are 28,985 services and stubs 16,390 regular meters and 12,128 prepay meters or a total of 28,51 meters.

The gas sales of the Company for the year 1913 to 1920 as shown in the testimony and as checked on the report are:

1913	863,874,200	Cubic fe
1914	885,831,900	" "
1915	856,244,400	" "
1916	957,028,100	" "
1917	1,091,694,000	" "
1919	1,205,325,000	" "
1920	1,387,932,100	" "

This shows an increase of 60% in a seven year period which is an excellent one and fully accounts for the necessity of large additions to the plant and probably explains some of the defficulties which have been encountered in giving the best of service, as the increase in the demand on the plant must have fully kept up with the growth of the gas producing plant.

This plant has grown up from a comparatively small beginning. As more capacity was required, a new building was built or an addition put on machines installed wherever there was room, and
283 the final result is a plant which is doing effective work, but which fails to present any show front, and which really is badly crowded for room. Crowded as the ground is with building and equipment, the appearance to the laymen is perhaps worse than it would be had the plant been all built as of one date. I am impressed with the effectiveness of the equipment. The coal handling plant is as good as I have ever seen in a gas plant. The coal-gas generating plant is most up to date. The benches were installed in 1912–1913 and of course the retorts are being continually renewed. The whole coal-gas equipment is in excellent condition, especially when compared with that found in other plants.

Work now in progress will clear ample space for the extension of the water-gas plant. The present water-gas generators were installed in 1892, 1894-1907 and two in 1918, additional now going in.

The plant is operated as a combined plant. The coal-gas plant produces as a by-product, sufficient coke to fully or nearly meet the needs of the water-gas plant.

In comparing cost of manufacture of gas in Atlanta and in other cities in the consideration of rate regulation, it must be borne in mind that such a plant as this one cannot be compared with by-product plants, such as Detroit, Birmingham, or Chattanooga, nor with natural gas, nor yet with coal gas plant, near the coal fields

r in communities where there is a large demand for coke and here the credit on account of residuals sold constitutes a large part of the income of the plant.

284 The gas property in Atlanta is a good property, and while not at all over-developed, it is keeping fairly well abreast of other prosperous properties in comparable Cities in the United States, so far as plant is concerned.

The mass of data, such as inventory, maps, plans and drawings, together with the monthly statistical reports of the Company, have been ample to enable me to arrive at conclusions which I believe to be correct, as to the extent and condition of the property, its probable cost, and permit the making of estimates as to the probable range of allowance of value for rate making purposes which could be expected were the matter to be left to the Court.

Valuations and Estimates of Value Which Have Been Made.

At the hearing of June 14th, 1918, Mr. A. E. Forstall, and experienced and thoroughly competent gas engineer, testified as to an estimate based on $4.00 per thousand cubic feet of gas sales as a pre-war estimate period. This was applied to the business of 1912 and increases for the years following, up to 1916 were determined by adding the actual expenditures of the Company. Beyond 1916, for the years 1917 and 1918, Mr. Forstall used the factor of 15% to cover the increase in the range of prices.

In table three, I have set up in column one, the figures testified to by Mr. Forstall, computing the years 1919, 1920 and Jan'y 1st, 1921, on the method adopted by him.

In column two, I have set up the estimates that would result from the application of his method for determining the value of the year 1912, disregarding altogether the actual expenditures of the Company for betterment.

285 Mr. W. A. Baehr of Chicago, one of the best known gas engineers in America, and a builder and operator of long experience, made a most elaborate inventory and valuation of the Atlanta Gas property.

This was done early in 1914, and at a time when the practice of valuation was not at all complicated by any question of unit prices. Controversies at that time were mainly confined to allowances for "Going Concern" an intangible value. This valuation was as of date March 1912 and showed total figures as follows:

Reproduction	$4,696,473
Present value	4,455,665

Excluding working capital and "Going Concern" allowances of $1,281,000 the estimates on physical property were:

Reproduction	$3,415,473
Present Value	3,174,665

I have taken the latter figure for the 1912 estimate in colum three and have brought down the estimates by adding actual ex penditures.

Mr. A. J. Luick, an associate of Mr. Baehr, made the most recen inventory and valuation of the plant.

This inventory has been examined by me and has been foun to be in most elaborate detail. Maps, plans, photographs, and ver complete notes accompanied this schedule. The age of all th major items of property, where known, is given.

Before coming to Atlanta I had the opportunity to check un prices used by Messrs. Baehr and Luick, in making the estimates o reproduction on each of the different bases. The close agreemen between the figures used on not only pre-war price level, but o the 1919 and 1920 level, and between the four year average betwee Mr. Baehr and my own five year average, leads me to say to you with out any hesitation that these figures represent just what they purpor to represent and may be accepted as correct estimates of cost of re production for the four price levels.

286 Column four contains the depreciated physical value as o Jany. 1st, 1920, on the four different bases, without an allowance for "Going Concern" or working capital.

In column five, the two valuations of the Georgia Commissio are set up for the Atlanta property, excluding "Going Concern" and working capital.

The figures in table three apply only to Atlanta, they do no include Decatur. None of them include any items other tha those of strictly physical plant without working capital.

The summaries of Mr. Luick's estimates on the various bases a of Jan'y 1st, 1920 are attached to this report as appendix A.

TABLE III.

Comparison of Various Estimates of Value of the Atlanta Gas Plant.

Year.	(1) Estimate of A. E. Forstall, June, 1918, depreciated value of physical property without working capital or intangible values.	(2) Estimate based on Mr. Forstall's method applied to annual output disregarding the actual expenditures, average value for the year.	(3) Mr. W. A. Baehr's 1912 valuation of depreciated physical property brought down by adding actual costs of construction.	(4) Estimates of A. J. Luick, based on inventory as of 1919, brought to date as of Jan. 1st, 1920, prices as of different periods.	(5) Valuations of the Georgia R. R. Commission.
1912	$3,319,200	$3,319,300	$3,174,665	.....	.....
1913	3,457,800	3,455,500	3,320,865	.....	.....
1914	3,551,100	3,543,300	3,451,900	.....	.....
1915	3,597,000	3,425,000	3,507,400	.....	.....
1916	3,647,700	3,512,500	3,543,700	.....	.....
1917	4,279,290	3,828,100	3,608,800	.....	.....
1918	4,331,300	4,366,800	3,712,900	$4,500,480 (*a*)	$3,500,000
1919 1/1	4,400,383#	4,813,300	3,782,000	6,365,858 (*b*)	.....
1920 1/1	4,467,700#	5,551,728	3,849,300	6,616,358@ (*c*)	.....
1921 1/1	4,691,000#	.....	4,062,700	6,285,858 (*d*)	3,966,621

(*a*) Average Prices, 4 yrs. ending 1/1/19.
(*b*) Prices as of January 1, 1919.
(*c*) Prices as of January 1, 1920.
(*d*) Prices as of January 1, 1921.
#Estimated for succeeding years under the method adopted for earlier years
@Testified to in 1921 hearing.

288 Other figures which tend to throw light on the question valuation are:

(*a*) Book values, the plant account is stated in the reports of t Company and in exhibits before the Commission as follows:

Gas Light Co. as of Dec 31, 1919	$4,304,952.
as of Dec. 31, 1920	4,518,396.

(*b*) Valuation figures of total property, including Decatur a with allowances for working capital and going concern va as presented by Mr. Baehr and Mr. Luick.

	Reproduction.	Present value.
1. Valuation of Atlanta property made in 1912	$4,696,473	$4,455,6
2. Valuation as of Jan. 1, 1919	8,834,714	7,616,7
3. Valuation as of Jan. 1, 1920	8,838,631	7,872,6
4. Valuation Jan. 20, Prices Jan. 1, 1921	8,450,700	7,532,9
5. Valuation average prices of 4 years	6,336,314	5,697,2

(*c*) Mr. Arkwright's valuation as of December 31st, 1920, whi is as follows:

Atlanta property (1920 Present Value)	$6,616,3
New Construction	160,2
Decatur property (1920 Present Value)	170,2
New Construction	7,3
Total Physical	$6,954,0
Value as a unified property, 10%	695,4
Working capital	533,6
	$8,183,0

The foregoing summation of testimony, and estimates made b not presented, covers the probable range of figures which could considered by a court in fixing "fair value."

Present remaining investment is represented by a figure son where between $4,500,000 and $5,000,000, while "fair value as 1921 as the courts have construed it in several recent cases, wou probably be found between $6,000,000 and $8,000,000.

289 Valuation for the Purpose of the Present Case.

In making my investigations in Atlanta, I have not limited m work to the consideration of valuation figures, but have given good deal of study to the matter of cost of manufacturing and oth operating expenses, having in mind the fact that the Supreme Co in Smythe vs. Ames, 169 U. S. especially refers to the subject operating expenses being one of the factors for consideration in m making.

The Atlanta plant has had exactly the same experience as other gas roperties in the Country since May or June 1917. Conditions since hat time have been probably the worst in the history of the industry. The manufacturing cost of the Atlanta Company are discussed under nother caption in this report, I only here refer to it, in order o direct your attention to the fact that the present is not a good ime for the fixing of permanent value. Not only must construction ost become fairly stabilized, but manufacturing cost and conditions nust be reasonably permanent before a schedule of unit prices can be ixed, which will be certainly fair to both the Company and its patrons hrough a long period of time.

The problem is not one of finding a set of rates that will pay rge profits to the owners of the property. It is to fix such as will nable them to find enough new capital to build additions to the plant hich are needed to meet the wonderful growth and development f your City. There is more real, visible development here in tlanta now, more new construction, than in any other City of which I have knowledge.

That Atlanta needs the service is evident by the growth of the usiness and the increased output of gas year after year. Ample as and ample electric power are a great asset to the community and he possession of the facilities that exist here add tremendously to the prestige of the City as a desirable manufacturing center.

290 The questions to be considered are:

1st. What is the actual investment, or what figure may be assumed o be fairly representative of the actual investment in physical prop-rty?

2nd. What is the "Fair Value" of the property, as that term is eing construed by the Court?

3nd. What is a fair rate of return on the present day conditions of he financial market? What rates does a Company with high class redit have to pay?

4th. What allowance for depreciation or replacement should be onsidered as reasonable?

5th. What gas rates are actually in effect in other Cities reason-bly comparable with Atlanta?

6th. What are the operating conditions in Atlanta and the actual perating cost of the Company?

I do not incline to the extreme high values of the war time period, ut believe that when business does resume prices will again stabilize figures considerably lower than the peak of 1920, but far above ny pre-war level.

This will mean that property of long life, installed before the ar will appear in a valuation representing investments at a figure uch below its present day value, if it has an expectation of a number years service.

It is clear to me that no rates that are in themselves reasonable that could be fixed would give a fair return on "Fair Value" as the Courts construe it under such operating conditions as have prevailed from May or June 1920 to Jany. 1921, and that valuation really is not the main issue at the present time.

The summary herewith submitted is based upon my best judgement as to a conservative figure, as of the present time, of remaining investment value in the property, plus an allowance for the value as an assembled whole and working capital.

While I have seen no figures of historical cost of the property, I am convinced that it is not less than $4,715,000. as of Jany. 1st 1921. I would submit as my answer to the first question, which I believe should be answered, what is the fair present worth of

291 the investment used in the business of manufacturing and selling gas in Atlanta and Decatur, the following estimate

292 TABLE IV.

Valuation of the Atlanta and Decatur Gas Properties.

Based on Inventory as of Jan. 1st, 1919, Investment Basis.

	Cost of reproduction.	Condition.	Reproduction less depreciation
Land Atlanta.....	$191,374	100%	191,374
Transmission and Distr:			
Atlanta	2,760,417	90%	2,484,375
Decatur	90,000	96%	87,264
Buildings and Structures:			
Atlanta	240,452	70%	168,316
Plant Equipment:			
Atlanta	1,274,395	83%	1,057,747
General Equipment:			
Atlanta	59,524	82%	48,810
Decatur	667	85%	566
Paving Actually Disturbed:			
Atlanta	88,979	80%	71,183
Decatur	14,977	90%	13,479
Physical Property as of January 1st, 1919..	$4,721,685		$4,123,116
Additions & Betterments:			
For the year 1919..	$67,315		$67,315
For the year 1920..	213,444		213,444
2 months 1921.....	37,430		37,430
Physical property, March 1st, 1921...	$5,039,874		$4,441,305

Value as an Established Business—10%.

Working Capital		444,130
Allowance made of two months operating expenses as a cash working capital to cover investment in payrolls, gas billed and in process of collection and stock and supplies used, between time of use and time of reimbursement	$264,000	
Stores and Supplies	150,000	
		414,000
		$5,299,435

NOTE.—This estimate is an attempt to express the writer's opinion as to the probable actual investment in each class of property, hence the unit prices of no one period have been used, but pre-war prices, plus a sufficient increase to cover cost of construction during 1917 and 1918, and to allow an added increment of value on property which has yet a long life.

Only one point I think calls for an explanation. I have used a considerably higher figure than that of the Commission or of Mr. Baehr, for working capital.

I have had occasion to make a pretty careful study of the subject of stores and supplies and working cash capital. I do not think that such a Company as this one should operate with less than two months' supplies of coal and oil on hand. Attached hereto as appendix B, is a statement of stores and supplies on hand, for gas department use only, at the end of each of the last six years. Monthly balance sheets will show no wide variation from the total as shown by the December statement. There also appears as sheet two (2) of this appendix, a monthly summary of coal and oil stocks for the years 1915 and 1920. These stocks are essential to the business and a large amount of money is tied up in stock all the time. In addition to this the amount of money invested in labor and material in gas, which has been used but not yet paid for, gas on hand, in mains and holders is fairly represented by one-sixth, rather than the usual allowance of ⅛ or 1/10 of the operating expense.

The last three cases in Michigan, of which the writer has the details with him, allowance *were* made as follows

Flint, Michigan; depreciated physical value	$1,785,000.
Working capital	156,000.
Ann Arbor, Mich. " " "	768,000.
Working capital	65,000.
Ypsilanti City, Mich. " " "	693,000.
Working capital	60,000.

While the allowance I have made is considerably less than testified to by Mr. Arkwright, it is believed to be a substantially correct

amount to represent that sum of money which is constantly tie
up in the business and which cannot be withdrawn from the bus
ness.

The "Fair Value" of the Courts.

In several recent cases the Courts have held unqaulifiedly for
valuation of all the units of property on a present day basis. Thi
in effect means revaluation every time a rate is in que
294 tion. To the writer it does not appeal as the best solutio
of the problem.

Should such a valuation be made, it would probably very closel
approximate the estimates of Mr. Baehr, as of Jany. 1st, 1921, wit
additions for "Going Concerns" and working capital.

TABLE V.

Valuation on Price Level as of January 1st, 1921.

Physical Property as of Jany. 1, 1921.

	Reproduction.	Depreciated value.
Atlanta	$7,196,164	$6,285,54
Decatur	174,536	167,45
Total physical	$7,370,700	$6,452,99
Value as an Assembled Property		645,29
		$7,098,29
Working capital		414,00
		$7,512,29

These figures are submitted merely as the writer's estimate of a probable maximum value based on testimony in this case and using the present day price level, as indicated by recent decisions.

In the present condition of the market, public utilities securities do not constitute a specially favored group.

Only those Companies with a sound financial standing can hope to maket their securities at all, and those at very high rates. Bond houses and Banks are offering highly secured paper at rates that will yield the investor from 7½% to 9%. Inasmuch as the general rule is that the Company must show earnings of from 2% to 2½%, the interest on all outstanding bonds, there must be a sound showing of earnings by any Company which has securities to sell.

The business man of this and every other community knows the present conditions. No business can survive if not allowed to earn over and beyond bare cost of operation. Those kinds of business which are under public regulation have been under a greater handicap than private business during the recent trying period, becaus

of the natural disinclination of the users of the product to
295 pay the advanced prices necessary to permit a return.

Up to 1917 a return of 7% on such a property as the one in question was considered fair. At the present time not less than 8% is in my opinion to be considered. I have used 8% as being the return necessary in making up the Exhibits which accompany this report.

Depreciation.

This word has been lo-sely used in rate and valuation discussions and it has been given two very distinct meanings, or rather has been used to apply to two very different conceptions. This is confusing to many people.

The primary meaning is loss of value. In my opinion any failure to maintain to the maximum of operating conditions was depreciation, which should be deducted, and the measure of the deduction should be the amount of money necessary to spend on the property to bring it back to maximum operating conditions.

In the estimate submitted, depreciation of this kind is represented by the following figures;

Cost of reproduction	$5,039,874
Present value	4,441,305
Depreciation deducted	$598,569

I think that this allowance is ample if not perhaps a little excessive, as an expenditure of nearly six hundred thousand dollars, would certainly place the property in most excellent condition.

The second use of the word, to represent the accounting allowance necessary to permit replacement or to maintain the integrity of the investment, is an unhappy choice of words.

It is difficult to get the conception that the wearing out of a water works pump over a period of twenty years, or the wearing out of a water gas machine in a gas plant is an operating expense, part of the cost of pumping water or making gas. The man who put his money
296 in the pump, must have not only his return on the money, but must earn enough more than the return to repay himself for the pump during its lifetime, or buy a new pump when the old one disappears. The only question is as to proper amount; the engineers are not in exact accord. Many claim as high as 4% or even 5% on the composite property.

With such renewals as gas house repairs, which are continually going on, I think 2½% is an ample allowance. I prefer the use of the term "Allowance for Replacement", to Depreciation.

Gas rates in Atlanta and Other Cities.

Whenever a rate is put into effect that causes a marked increase in the bills of the consumer, there is always a tendency first to complain, second to find out what the other fellow is paying. The secur-

ing of a figure per thousand feet which is in effect in another City, may be very misleading unless all the facts are known. Illustrating: at Akron, the rate on the first five thousand feet is 48¢. This is the natural gas rate in a territory of limited supply and the rate is designed to prevent industrial use and encourage economical use of domestic supplies.

Detroit has a rate of 89¢ on the first fifty thousand feet with a 10% discount. Several Billion cubic feet are purchased annually by the gas company from a concern which has an immense coke oven plant, producing coke, etc., the gas being a by-product which is sold at a very low figure. In considering other figures it is necessary to bear in mind the fact that they may or may not be comparable with conditions in Atlanta. The proximity to a coal field, availability of a by-product supply of gas, freight rate, labor cost and labor efficiency are all elements which enter largely.

Then, too, there are many gas properties still operating under franchise rates or established rates which are far from ade-
297 quate and this condition is reflected in poor maintenance of plant or poor service, facts which do not appear without a full analysis of the business of each Company.

I have never found conditions exactly the same in any two plants. The tables should be used with caution and conclusions not hastily drawn.

Atlanta is now the leading metropolis of the South. The Company covering the period 1912 to Feby. 1921 inclusive. developed. All these facts make a lower rate proper, than was proper for the little industry in a small town of fifty years ago. The statistical facts bear out such rates as have recently been granted of from $2.50 to $4.00 or over, per thousand feet in small Cities throughout the Country.

Operating Cost in Atlanta.

I have had prepared satistical data from the records of the Company covering the periods 1912 to Feby. 1921 inclusive.

From 1912 to 1916 operating expenses were quite uniform. The fluctuation was within small limit and only marked the difference between normal summer and winter use of gas.

The normal times operation of the plant is shown in the first three columns of table seven and the violent extremes of fluctuation in the other columns.

298 The history of gas rates in Atlanta is of interest as showing the changes which have taken place in the more than half a century that this company or predecessor companies have been making gas in Atlanta.

TABLE VI.

Gas Rates in Atlanta.

Maximum Rate Only is Given.

Effective.	Gross rate per M cubic ft.	Discount for prompt paymt.	Net rate Per M.
Nov., 1868	$5.00	$.50 per M.	$5.00
Jan., 1871	5.00	.50 per M.	4.50
Mar., 1875	4.50	.50 per M.	4.00
Oct., 1876	4.00	.50 per M.	3.50
Oct., 1878	3.50	.50 per M.	3.00
Oct., 1882	3.00	20%	
July, 1883	2.50	20%	
July, 1884	1.80	.30 per M.	1.50
Nov., 1884	1.50	.33⅓ per M.	1.00
April, 1891	1.10	.10 per M.	1.00
Sept., 1918	1.25	.10 per M.	1.15
Oct., 1920	1.55	.10 per M.	1.45
Feb., 1921	2.00	.10 per M.	1.90

The Scale of Rates of the three orders of the Commission is shown as follows:

	1st 10 m.	Next 20 m.	Next 20 m.	Over 50.
Effective Sept. 1, 1918	$1.25 per M.	$1.15 per M.	$1.05	$.95
Effective Oct. 1, 1920	1.55 "	1.45 "	Over 30 M. $1.35	
Effective Mar. 1, 1921	2.00 "	1.95 "	Over 30 M. 1.90	

Discount on all schedules .10 per M for payment before the 10th of the month.

Minimum monthly charge $1.00 per customer meter.

TABLE VII.

Comparison of Operating Expenses, Atlanta Gas Property, Illustrating Increase in Cost and Extreme Fluctuation.

In Cents per Thousand Feet of Gas Sold.

	Normal year, 1913.	Normal year, 1915.	Normal Jan., 1917.	June, 1917.	High, Dec., 1917.	Low, June, 1919.	1920 war avg., Jan.	Extreme high, Oct., 1920.
Manufacturing Labor	.0578	.0594	.0540	.0662	.0776	.1288	.1243	.2004
Manufacturing Material	.3652	.3355	.3503	.5932	.8953	.5189	.6408	1.3714
Total Mfg. Expense	.4230	.3949	.4043	.6594	.9719	.6477	.7651	1.5718
Credit by Residuals	.1394	.1629	.1023	.2283	.1505	.1499	.1546	.2100
Net Cost of Mfg.	.2836	.2320	.3020	.4311	.8214	.4978	.6105	1.3618
Distribution Expense	.0796	.0726	.0591	.0628	.0645	.0900	.0822	.1002
Commercial Expense	.0853	.0663	.0635	.0904	.0707	.0994	.0463	.0605
General Expense	.0226	.0373	.0323	.0433	.0600	.0330	.0458	.0895
Cost of New Business	.0326	.0266	.0201	.0096 Cr.	.0113 Cr.	.0058 Cr.	.0124	.0235
Total Exp. less Credit	.5037	.4348	.4770	.6180	1.0053	.7144	.7972	1.6355
Total Revenue	.9851	.9900	.9850	.9850	.9931	1.1150	1.1181	1.4217
Net Operating Income	.4814	.5551	.5080	.3670	.0122 Loss	.4006	.3209	.2138 Loss
Taxes	.0823	.0793	.0680	.0827	.0771	.0677	.0538	.0680
Net after Taxes	.3991	.4758	.4400	.2843	.0893 Loss	.3329	.2671	.2818 Loss

This table shows the extreme month, October 1920, but is also shows the wide variation which has taken place.

300 I have prepared four charts which show the fluctuations in cents per thousand feet sold from 1914 to Feby. 1921. These diagrams greatly resemble other operating expense diagrams of any gas company.

The fourth chart is based on operation statistics, show graphically what the figures show upon careful study. This may be stated very briefly thus:

1. The total operating expenses of the gas company show a sustained increase of over 100% above the pre-war expenses.

2. Manufacturing costs have risen to a sustained increase of 100% to 125% above pre-war costs, touching 200% increase in October, 1920. Feby. 1921 was 116% above the average of 1913, the year which showed the heaviest pre-war cost.

3. There is a very distinct relation between the cost of coal and oil and manufacturing costs as shown in all the charts.

4. The cost of labor in cents per thousand feet of gas sold, was in August 1920 over 200% in advance of the cost prior to 1917. It has dropped back to about 125% above the pre-war figure in Feby. 1921.

5. Coal and oil, the greater part of the material cost, show an average cost in Feby. 1921, including freight of over double that of the period 1912 to Jany. 1917. This is reflected in a cost of coal and oil in cents per thousand feet of gas sold, which is now well over 100% above pre-war cost.

6. The pre-war normal percentage of 65% to 70% which materials of manufacture bore to total cost has increased to a percentage of from 80% to 85%.

7. There has been no material increase in any other operating expense accounts. The average increase is less than 25%. This indicates that every effort has been made to prune costs to the lowest possible point.

A careful study of the data submitted will conclusively prove that the conditions facing the company demanded the action taken by your Commission and that only by the continuance of such an adequate rate as your Commission sees fit to prescribe for a sufficient
301 period to make sure that conditions as to coal and oil prices are stable, and to permit the Company to dispose of the stock which it has laid in, and properly so, at a time of high prices, can the Company hope to maintain its credit.

The Company has been operating for many months at a loss, not only in not receiving an adequate return, but no return at all, and for much of the time, not earning any depreciation.

I believe that what has been presented, together with chart one, two, three and four, effectively prove the point I desire to make as to the general conditions.

The Financial Showing, Return, and Replacement.

I have taken the value fixed by the Commission as the basis and computed the value of the property as of December 31st, each year by the deduction of actual cost of addition to the plant and by adjustment of the allowance for adaptation.

I have taken as an average value for the year a figure which allows only one-half of the year's expenditures. I have computed allowance for replacement at 2½% and fair return at 7% for 1913-1914-1915 and 1916, at 7½% for 1917 at 8% for 1918 to 1920.

These figures are set up in table eight, which forms the basis for a comparison of the actual business of the Company, and their actual earnings and expenditures as shown on their books, with the figures of reasonable return which might have been expected, and which they did actually earn during the first four years of the eight-year period.

302 TABLE VIII.

Valuation of Atlanta and Decatur Gas Properties Based on the Georgia Railroad Commission 1921 Valuation.

Computation of Minimum Return.

Year.	Valuation as of Dec. 31st.	Rate base for year Dec. value, less one-half additions and adaptations allowance.	Reserve for replacement, 2½% on phys.	Rate.	Fair return on rate base.
1912	$3,572,723	.....	.....	7%	.....
1913	3,726,866	$3,654,795	$79,247	7%	$255,836
1914	3,794,357	3,763,837	81,760	7%	263,469
1915	3,834,300	3,814,328	82,818	7%	267,003
1916	3,905,882	3,870,091	84,082	7%	270,906
1917	4,020,352	3,963,117	86,199	7½%	297,234
1918	4,096,343	4,058,348	88,363	8%	324,668
1919	4,170,390	4,133,366	90,068	8%	330,669
1920	4,583,635	4,267,512	97,162	8%	341,400

303 These comparisons of actual earnings appear in table nine. The conclusions are obvious. The increases in rates granted by the Commission up to Feby. 1921, were not sufficient to permit enough earnings to show a fair return on what appears to me to be the minimum valuation that could possibly be taken as a reasonable value. Indeed in 1920 the Company failed to earn a proper amount for replacement to offset the depreciation of the year by $57,494, without considering any return at all.

The showing of this table compels the conclusion that during the years of high prices and great prosperity and growth in the South, the Atlanta Gas property had no share in the general prosperity, and was handicapped in making the necessary extensions to meet the demands made upon it. Any letting up in quality of service is explained by this table. This general state of affairs is true largely of the gas industry throughout the United States and is by no means a local condition in Atlanta.

TABLE IX.

Revenues, Expenses, Taxes, Reserves, and Gain or Loss, Eight Year Period 1913 *to* 1920, *Inclusive.*

Based upon the Georgia Railroad Commission Valuation of 1921 Adjusted for Former Years.

Account.	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.
Gross Revenue.....	$853,102	$874,090	$847,649	$866,967	$939,298	$1,070,463	$1,347,223	$1,708,662
Operating Exp.....	435,169	422,265	383,533	424,512	648,912	850,287	966,877	1,585,193
Opr. Revenue.....	417,933	452,434	464,116	442,455	290,386	220,176	380,346	123,469
Taxes	71,166	69,813	67,909	71,437	80,280	72,913	94,423	83,801
Net Income.....	346,767	382,621	396,207	371,018	210,106	147,263	285,922	39,668
Reserve for Repl.....	79,247	81,760	82,818	84,082	86,190	88,363	90,068	97,162
Net Earnings.....	267,520	300,861	313,389	286,936	123,907	58,900	195,854	57,494‡
Fair Return.....	255,836	263,409	267,006	270,906	297,234	324,068	330,669	341,400
Gain or Loss.....	‡11,684	‡37,392	‡46,386	16,030	173,327@	265,768@	134,815@	398,894@
M cu. ft. Gas Sold.....	863,874	885,832	856,244	878,114	957,028	1,091,694	1,205,326	1,387,932

Gain, in first four years of the period..... $111,492

Loss in last four years of the period..... 972,804

Net Loss Jan. 1, 1913 to Jan. 1, 1921..... $861,312

‡Deficit.

@Loss.

305 Probable Earnings under the Present Rate.

The only other subject to be considered in this report is the eff on the earnings of the Gas Company of the present rate and the termination as to whether or not that rate is high enough or too hi

Prior to Sept. 1st, 1918, the maximum rate was $1.10, less 10 for prompt payment. On that date the rate went to $1.25 gross, $1 net and on Oct. 1st, 1920 the rates were placed at $1.55 gross, $1 net.

Comparing these maximum net rates with the average gas s in cents per thousand feet, an approximation can be had of the p able average receipts of the Company under the new rate. Any b for estimating future returns must rest on past experience.

306 TABLE X.

Relation of Maximum Gas Rate to Earnings per M Feet.

Period.	Maximum net rate.	Av. gas sales, in cents per M.	Per cent of max. rate.
Year 1912	1.00	.9924	99.2
Year 1913	1.00	.9585	95.9
Year 1914	1.00	.9843	98.4
Year 1915	1.00	.9835	98.4
Year 1916	1.00	.9813	98.1
Jan. 1917	1.00	.9817	98.2
June 1917	1.00	.9784	97.8
Jan. 1918	1.00	.9677	96.8
June 1918	1.00	.9746	97.5
Oct. 1918	1.15	1.1046	96.
Jan. 1919	1.15	1.1297	98.3
June 1919	1.15	1.1141	97.
Sept. 1919	1.15	1.1226	97.6
Jan. 1920	1.15	1.1177	97.1
May 1920	1.15	1.1231	97.7
Oct. 1920	1.45	1.3462	93.
Nov. 1920	1.45	1.3812	95.2
Dec. 1920	1.45	1.3321	92.7
Jan. 1921	1.45	1.4226	98.1
Feb. 1921	1.45	1.4284	98.6

307 Based on the showing of the above table, it is reasonable assume the Company will average 97% of the maximum n rate on its entire output or an average yield from the new rate $1.84 per thousand.

In view of the fact that the output of the Company is steadily i creasing, 1920 showing nearly 15% increase in output over 191 with almost exactly the same ratio of increase for 1919 over 191 and for 1915 over 1917, I think there is justification for estimatin an increase in the business of not to exceed 10% for the year 192

may be that there will be no increase at all, in which case all the llowing estimates are excessive.

The total gas sold in 1920 was..... $1,387,932,000 cubic feet,
nd on the basis of this increase I estimate
for 1921 a total of..... 1,526,725,200 " "

It is believed that the higher rate will educe the percentage somewhat.

Estimated for the year 1921..... 1,526,725,200 " "
Actual for Jan. & Feb..... 252,875,500 " "

Estimated output for March 1st to
Dec. 31 1,273,848,700

To go into the realm of prophecy is risky, therefore I do not feel stified in making one estimate, but will base the forecast of operating expenses on several different assumptions to show what would e the result under varying conditions of cost of materials of manufacture. Some of the elements of cost are reasonably definite and ave shown comparatively little variation for many months.

08

TABLE XI.

Estimated Operating Expenses and Taxes on Various Assumptions, in Cents per Thousand Feet of Gas Sold.

Item.	Conditions as of Dec., 1919.	Conditions as of July, 1920.	Conditions as of Oct., 1920.
Labor Manufacturing	.165	.165	.165
Material Manufacturing	.762	.969	1.365
Distribution	.075	.075	.075
Commercial	.080	.080	.080
Expense	.065	.065	.065
New Business	.020	.020	.020
Gross Operating	1.167	1.374	1.770
Credit by Residuals	.150	.150	.15
Net Cost	1.017	1.224	1.62
Taxes	.080	.080	.80
Total Opr. Exp. and Taxes ...	1.097	1.304	1.70

Explanation.

1. It is not assumed that labor will decrease to any extent in the xt year or two. The figure taken as constant is a fair average for 19-1920, but several cents per thousand below the maximum.

2. The greatest variation is in materials of manufacture. The ies which are chosen are representative of practically all conditions d are believed to be fully representative.

3, 4, 5, 6. These accounts show very slight changes since the b
ginning of the war.

Taxes are arbitrarily assumed at .080 cents per thousand ft. of g
sold around which figure they have been for the past two or mo
years.

309 Estimate I

Assumes that the Average for the year 1921 will approximate co
and oil costs as of Dec. 1919. If prices drop as rapidly as they re
from January 1920, and continue to drop steadily till Dec. 31st,
reflected in material costs in manufactured gas, they will about rea
this level at the end of the year. This assumption is based on a
average cost for the year in the bunkers of $2.00 less than the ca
price on March 1st and an average of 5 cents less per gallon on d
in the tanks at the works. This assumption is within the range
possibility.

Gross Operating Revenue 10 months 1,273,848,700 ft. @ $1.84	$2,343,88
Actual Gross Revenue, 2 months	364,36
Gross Operating Revenue	$2,707,24

Basis A. Comparison on Valuation of the Railroad Commission.

Reserve for Replacement	$101,49
Estimated Net Earnings after Reserve for Replacement.	860,31
8% Return on Commission's Valuation	369,94
Profit	$490,37

Basis B. Comparison on the Valuation as given in Table IV.

Reserve for Replacement	$111,03
Estimated Net Earnings after Reserve for Replacement.	850,71
8% Return on Valuation of Table IV	423,95
Profit	$426,76

Basis C. Comparison on the Valuation as of Jan. 1, 1921.

Reserve for Replacement	$161,32
Estimated Net Earnings after Reserve for Replacement.	800,42
8% Return on Mr. Baehr's 1921 Val.	600,97
Profit	$199,44

10 Estimate II

Assumes that material prices will average for the year conditions as of July 1920. These material costs as reflected in manufactured gas are a little below the mean of the extreme low of June 1919 and the extreme high of October 1920. They are below February 1921, altho coal and oil prices at the plant in February had reached a lower figure. I believe this estimate to be a reasonable one to represent average costs for the year.

Gross Revenue as in Estimate I		$2,708,249
0 months @ $1.30	$1,656,003	
months actual	349,089	
		2,005,092
Net earnings after taxes		$703,157

Basis A, as in Estimate I.

Reserve for Replacement	$101,432
Estimated net earnings after reserve for replacement	601,725
% Return on Commission's Val. to March 1st	369,943
Profit	$231,782

NOTE.—If no increase in gas output in 1921 over 1920, above profits decrease by $113,436.

Basis B, as in Estimate I.

Reserve for replacement	$111,032
Estimated Net Earnings after Reserve for Replacement	592,125
% Return on Valuation in Table IV	423,297
Profit	168,828

Basis C, as in Estimate I.

Reserve for Replacement	$161,322
Estimated Net Earnings after Reserve for Replacement	541,835
% Return on Mr. Baehr's 1921 Val.	600,893
Fail ro earn 8% return by Deficit	$59,058

1 NOTE.—Operating Expenses plus taxes, taken above at $1.50. The actual for the past eight months shows, July 2564; August $1.4782; Sept. $1.4905; Oct. $1.7035; Nov. 5045; Dec. $1.6772; Jan. $1.5145; Feb. $1.2791: average about 48.

If no increase in gas output in 1921 over 1920, above estimate d
creases by $208,475.

Estimate III

Assumes the highly improbable condition that average costs wi
approximate October 1920. This estimate is given to show the e
treme ranges which might be taken in presenting estimates of i
come.

Gross Operating Revenue as in Est. I		$2,708,2
Operating Expenses and Taxes:		
10 months @ $1.70	$2,165,543	
2 months actual	349,089	
		$2,514,63
Net Earnings after Taxes		193,61
Basis A. Reserve for Replacement		101,43
Estimated Earnings after Reserve		92,18
8% Return on the Commission's Val		369,94
Deficit—Short of 8% Return		$277,75
Deficit on Basis B		$341,37
Deficit on Basis C		568,68

If no increase in 1921 over 1920 in gas output, earnings will b
less by $269,544 than above estimates.

While this asumption as to operating costs seems to be a mo
violent one, it is not any more so than the costs in Estimate I
would have been at any time prior to June 1917. Estimate III
merely represents the condition in which the Company has actuall
been operating during the past four years.

312 Conclusions as to Rate.

In discussing the whole subject of cost of manufacturing gas an
of earnings, I have attempted to so analyze the statistics of the A
lanta Gas Company, as to enable you to arrive at conclusions whic
are based on pretty full knowledge of all the facts.

During the five years from 1912 to 1916 inclusive, business wa
normal and the property earned a little better than 7% on its the
value.

From early in 1917 up to the present time, the gas busines
throughout the Country has been ruinously bad. Cost of materia
has risen and fallen, and risen to height deemed impossible a fe
months ago. During these four years, the Atlanta Company no
only failed to make a profit, but earnings were below a fair return
by well into a million dollars.

Two previous rate increases failed to give the Company enough
o meet operating expenses and replacement to offset depreciation.
The third increase, to a net maximum rate of $1.90 is questioned.

If we were limiting our consideration to the evidence as to busi-
ess in the last eight months, the answer would be that a net maxi-
mum rate of $1.90 on which the Company will probably secure an
verage income per thousand feet of gas sold of about $1.83 to $1.84
s not enough. To continue business under conditions predicated
n these months, I should say that a net rate of in excess of $2.00
ould be necessary.

When we consider the entire four year period, and especially,
hen we examine the history of price fluctuations following all other
ars, I believe that we are amply justified in stating that our busi-
ess conditions in the United Sttes will assume something like a
ormal condition and that we may expect a stabilization on some-
hing approximating present day prices.

On such an assumption, I think the present rate is enough, but I
do not think it is excessive.

Nor do I think it will give an excessive return on the Com-
mission's valuation, which is I think the extreme minimum
o represent actual investment, but which is not open to the objection
f being too low to be in reason.

If freight rates on coal and oil are reduced, the present rate can
e lowered.

If business conditions return to an approximation of conditions
f 1918 and 1919 within the next few months, the present rate can
e lowered.

Just at present, I do not think the Commission should recede
om its order. Any charge should I think be based on average cost
er a period of 3 or 4 months and such an average now does not
stify any decrease.

Your attention is directed to the fact that operating expenses, plus
xes of the Atlanta Gas Company rose in 1917—50¢ from Feb'y to
ec., then fell heavily to Feb'y 1918. Another rise came reaching
e peak in Oct. The drop to the extreme low point in 1919 con-
nued until April, after which there was a rise of 30¢ per thousand
a peak in December. The drop in 1920 reached the low point in
larch and April, rising to the extreme maximum in Oct. and nearly
high in December. The statistics and the chart show a low point
ery year in the Spring and a much higher cost in the Fall and
inter. I would not recommend any reduction in rates at least
til the fuel situation clears up.

I believe it will be sounder policy for the gas company to accept
somewhat higher rate of return on the lower valuation fixed by
e Commission, than to argue for an extreme valuation figure, with
rate of 8%, which would inevitably result in a revaluation to a
wer basis as soon as prices drop.

I think also that the citizens of Atlanta should keep fully in mind
e probable result of an appeal to the Courts as the tendency cer-
tainly is for the courts to use valuation as of the date of in-
quiry. The gas business is not a good business to engage in

at the present time. Business conditions are too uncertain and the hazard is too great for any serious consideration of any alternative but such an adjustment as will permit this company to not only continue to exist, but permit it to expand and keep up with the development of Atlanta.

There has been complete co-operation on the part of officials and employees of the Company in giving full access to all records, statistics and valuation, inventories and estimates, and to the officials and employes of the R. R. Commission for cordial co-operation.

(Signed) HENRY E. RIGGS.

315 APPENDIX B.

Gas Stores and Supplies.

	Dec. 31, 1915.	Dec. 31, 1916.	Dec. 31, 1917.
Store Room Works.....	$3,135.51	$4,059.38	$8,128.03
Store Room Decatur Street	50,424.30	54,486.36	61,592.40
Store Room Sundry Sales	2,115.67	2,561.86	3,760.82
Gas Coal Stock.....	19,389.90	25,042.22	11,599.24
Oil (Water Gas) Stock..	6,391.38	4,367.97	3,064.48
Purification Supplies Stock	4,759.39	5,064.97	5,339.44
Enricher Coal Gas Stock	.....	.....	.....
Boiler Fuel Stock	.....	.....	.....
Gas Stock	1,402.53	1,343.69	1,334.13
Store Room Repair Shop	.....	6,816.19	10,325.95
Store Room Str. Main Dept.	.....	5,164.08	8,346.51
	$87,618.68	$108,906.72	$113,489.00

	Dec. 31, 1918.	Dec. 31, 1919.	Dec. 31, 1920.
Store Room Works.....	$2,199.69	$2,396.04	$4,143.59
Store Room Decatur Street	76,954.79	55,576.92	59,654.81
Store Room Sundry Sales	2,940.43	1,784.39	4,689.48
Gas Coal Stock	35,020.76	24,682.53	30,617.84
Oil (Water Gas) Stock	42,544.42	24,684.50	41,714.00
Purification Supplies Stock	5,347.81	6,731.96	9,105.63
Enricher Coal Gas Stock	120.17	120.17	1,326.19
Boiler Fuel Stock	.....	398.28	.....
Gas Stock	1,455.90	1,436.56	1,397.71
Store Room Repair Shop	10,287.22	10,439.39	15,610.17
Store Room Str. Main Dept.	7,716.12	5,208.49	22,704.80
Store Room Distribution Shop	.....	.....	.....
Generator Fuel	.....	8,713.97	7,519.44
	$184,587.31	$142,169.20	$198,483.66

CHART I.

CHART I.

ATLANTA GAS OPERATIONS

Diagram showing the effect of the war on the gas business in cents per 1000 feet of gas sold.

Figures represent actual disbursed costs and receipts. They do not include any payment for Taxes, no allowance for depreciation or replacement of plant, no allowance for return on the investment.

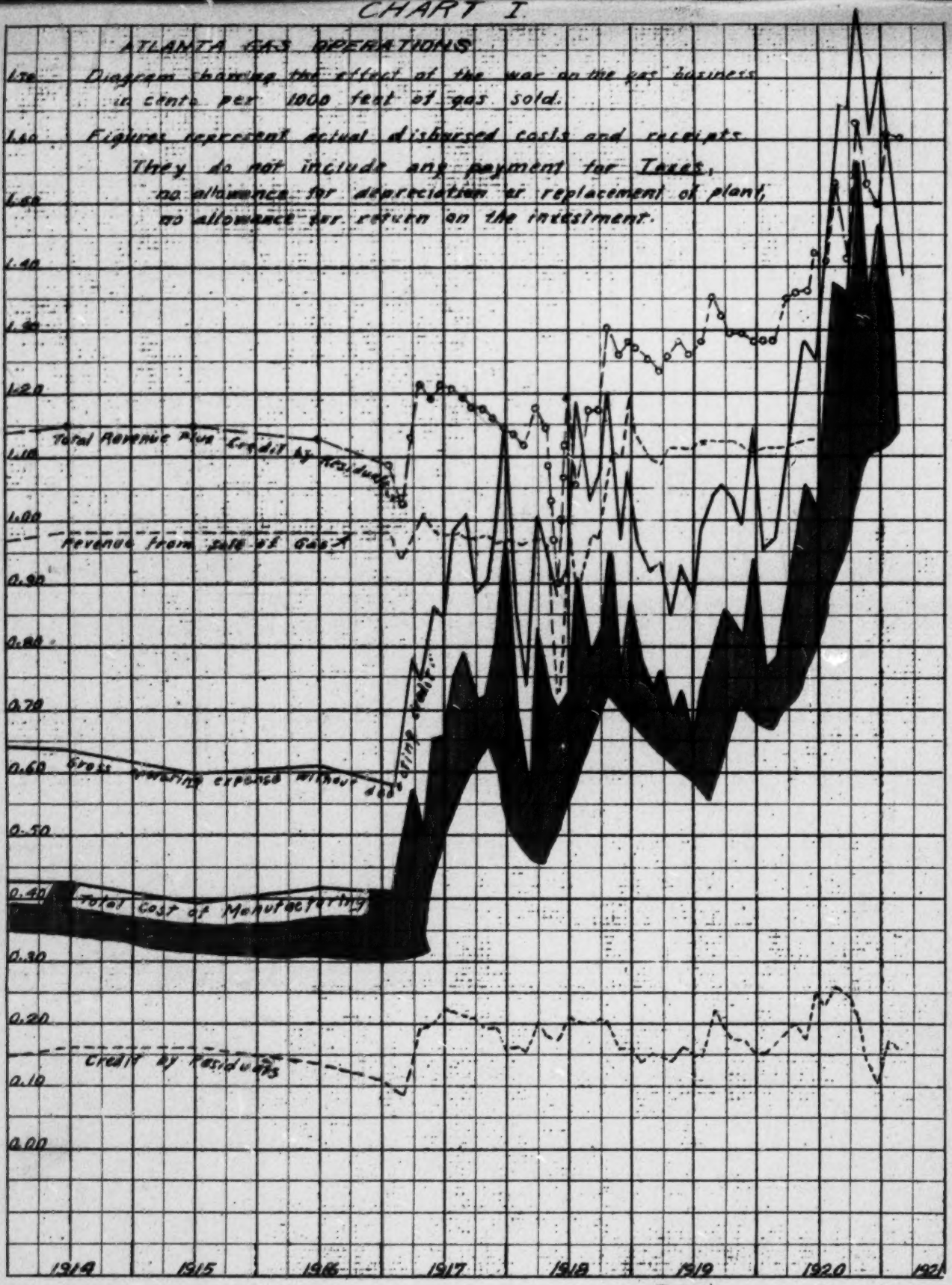
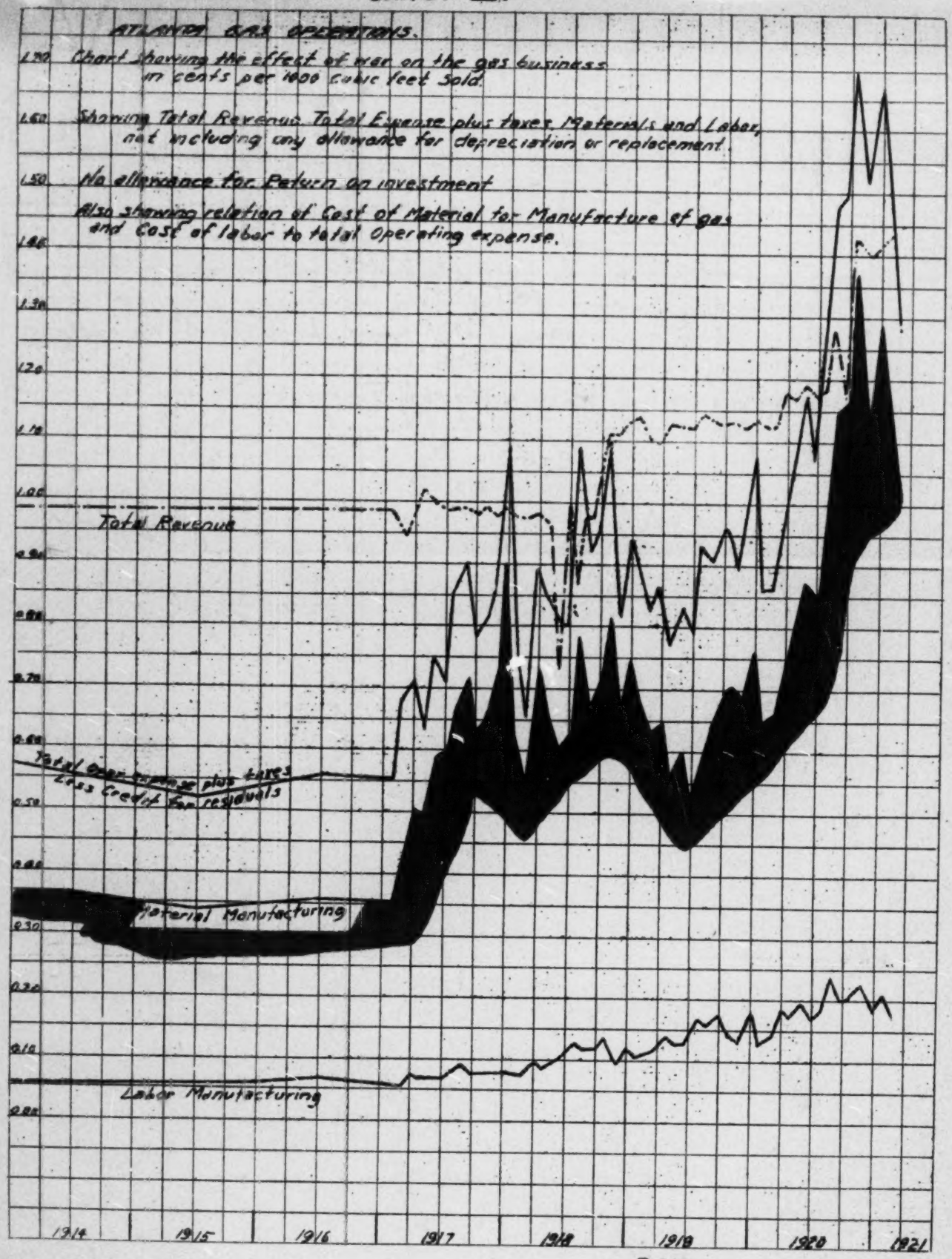
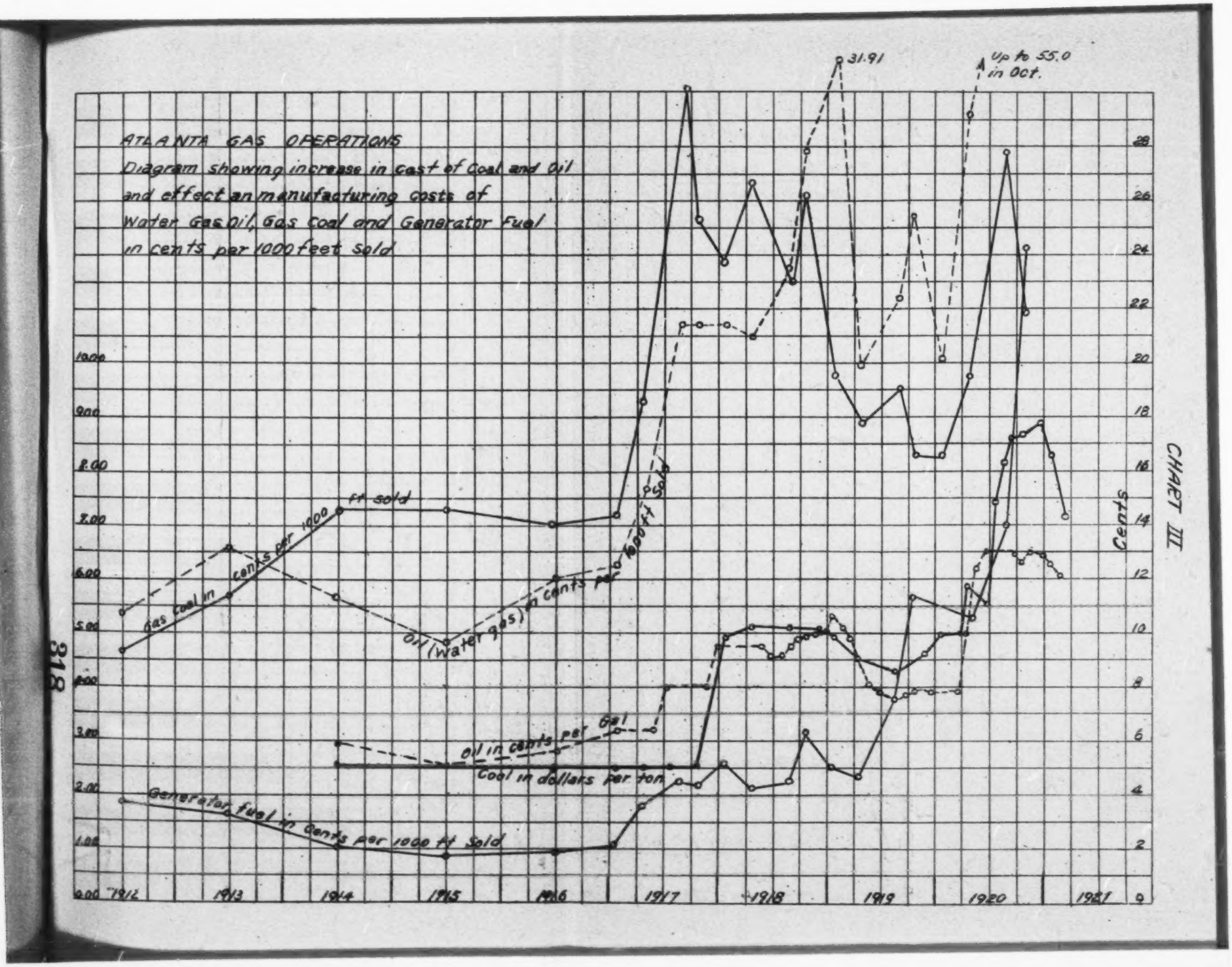


CHART II.


ATLANTA GAS OPERATIONS.
Chart showing the effect of war on the gas business
in cents per 1000 cubic feet sold.
Showing Total Revenue Total Expense plus taxes Materials and Labor,
not including any allowance for depreciation or replacement.
No allowance for Return on investment
Also showing relation of Cost of Material for Manufacture of gas
and Cost of labor to total Operating expense.
1.70
1.60
1.50
1.40
1.30
1.20
1.10
1.00
0.90
0.80
0.70
0.60
0.50
0.40
0.30
0.20
0.10
0.00
Total Revenue
Total Oper. expense plus taxes
Less Credit for residuals
Material Manufacturing
Labor Manufacturing
1914
1915
1916
1917
1918
1919
1920
1921


ATLANTA GAS OPERATIONS
Diagram showing increase in cost of Coal and Oil
and effect on manufacturing costs of
Water Gas Oil, Gas Coal and Generator Fuel
in cents per 1000 feet Sold
31.91
Up to 55.0
in Oct.
Gas coal in cents per 1000 ft sold
Oil (Water gas) in cents per 1000 ft sold
Oil in cents per Gal
Coal in dollars per ton
Generator fuel in Cents per 1000 ft Sold
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
Cents
CHART III

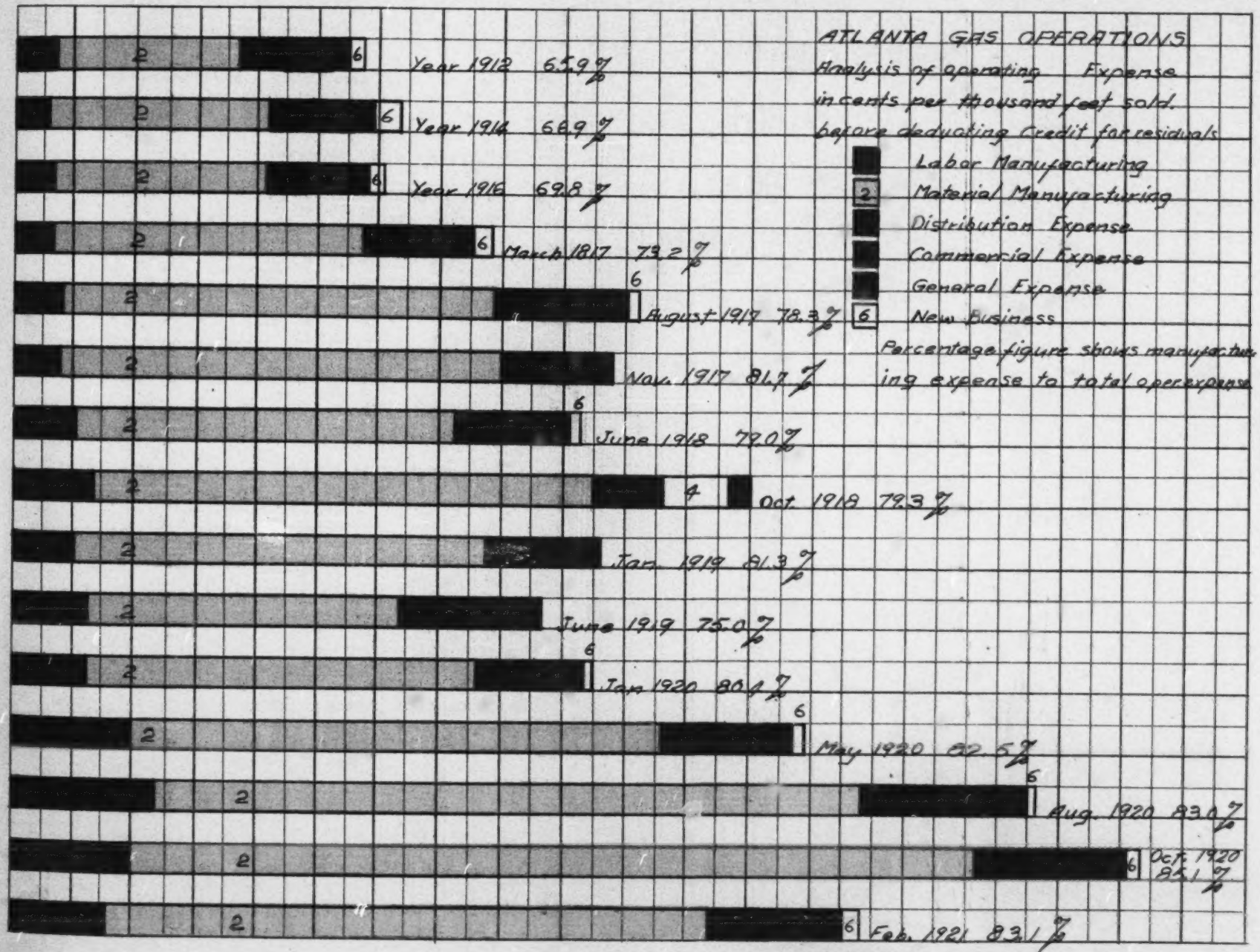

ATLANTA GAS OPERATIONS
Analysis of operating Expense
in cents per thousand feet sold.
before deducting Credit for residuals
Labor Manufacturing
2 Material Manufacturing
Distribution Expense
Commercial Expense
General Expense
6 New Business
Percentage figure shows manufacturing expense to total operexpense
Year 1912 65.9%
Year 1914 66.9%
Year 1916 69.8%
March 1917 73.2%
August 1917 78.3%
Nov. 1917 81.7%
June 1918 79.0%
Oct. 1918 79.3%
Jan. 1919 81.3%
June 1919 75.0%
Jan 1920 80.4%
May 1920 82.5%
Aug. 1920 83.0%
Oct. 1920 85.1%
Feb. 1921 83.1%

CHART IV

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15½ APPENDIX B—Continued.

Memoranda of Coal and Oil Stocks.

Year 1915.	Coal.	Oil.
January	.....	.....
February	$20,262.12	$7,443.32
March	16,190.64	6,180.93
April	21,490.13	7,233.30
May	22,967.42	7,173.56
June	23,362.99	6,847.91
July	21,840.28	6,970.65
August	22,154.18	6,512.56
September	22,291.59	6,506.82
October	21,716.65	7,066.64
November	21,327.36	6,779.51
December	19,389.90	6,391.38
	$232,993.26	$75,106.58
Average per mo.	$21,181.20	$6,827.87
Year 1920.		
January	$13,534.44	$27,389.05
February	6,126.43	29,509.64
March	13,443.60	19,743.08
April	34,475.31	24,735.50
May	29,169.03	56,625.39
June	15,918.32	77,952.25
July	22,564.72	75,302.43
August	22,927.36	86,928.88
September	44,924.44	61,378.83
October	40,203.54	39,112.63
November	45,028.06	46,796.79
December	30,617.84	41,714.00
	$319,113.09	$587,188.47
Average per mo.	$26,592.58	$48,930.40

(Here follow charts I, II, III, and IV, marked pages 316, 317, 318, and 319.)

320 Complainants introduced the record of the hearing befo
the Railroad Commission of Georgia on the rule nisi issued
the Commission to the Gas Light Company to show cause why
rates should not be reduced. This hearing began October 31, 19
and was in brief as follows:

The Commission had directed the Company to file with it a detail
report of additions, improvements, and betterments made on its g
plant and distribution system properly chargeable to Capital A
count Since Jany. 1st, 1921, and in use Sept. 21st, 1921; copi
of any unexpired contracts for coal and oil in effect Sept. 15t
1921, with quantities due thereom; statements of quantity of co
and oil on hand Sept. 21st, 1921 and average used monthly und
normal conditions. This order has been complied with and the r
port in question has been filed with the Commission by complainan

The answer of the Georgia Railway & Power Company was re
and twenty-five Exhibits were also filed with the Commission
part of the record.

Complainants introduced A. J. LUICK, who testified in brief
follows:

I live in Chicago, Ills., and am an engineer in the employ of M
William A. Baer, a consulting engineer of that City. I am in charg
of the valuation and rate department in that office principally.
was graduated from the mechanical engineering department of th
University of Wisconsin in June 1907. Immediately after gradua
ing I entered the employ of the Laclede Gas Light Company of S
Louis, Mo., as engineer. While there, as advisory engineer, I wa
successively in charge of boiler and engine rooms, coal gas opera
tion, and water gas operation, and assisted in such construction wor
and repair work as was done at the plant. In Feby. 1909, I was give
leave of absence to assist in the valuation of the water, gas, an
electric departments of the Detroit Gas Water and Electric Com
pany. After the completion of this work, about May 1st, 1909,
left the employ of the Laclede Gas Light Company and entered th
employ of the Peoples Gas Light and Coke Company of Chicago, an
made inventory and appraisal of its properties in Chicago. Shortl
after completing this work, about March 1911, I entered the emplo
of Mr. William A. Baer, of Chicago, to take charge of valua
321 tion and rate work in his office. Since I have been in thi
line of work I have made inventories and appraisals of publi
utility properties of a total value of more than $250,000,000.00
These include inventories and valuations of the Peoples Gas Ligh
and Coke Company, of Chicago, Kings County Electric Company
Brooklyn, Gas and Electric Company of Oshkosh, Minneapolis Ga
Light Company, of Minneapolis, Minn., Omaha Gas Company
Electric Gas Heating & Street Railway Departments of the Georgi
Railway and Electric Co., Atlanta, Georgia, and many others. As
assistant to Mr. Baer, I have also had a great deal of such othe
work as is customarily done in the office of a consulting engineer.
This would comprise a making of so-called reports for the purpose o
issuing securities, reports for the purpose of purchasing properties

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the designing and construction of utility plants, and extensions to such plants, and the purchasing of materials and equipment for plants of this character. I have also assisted in the operation of such utility companies, as are operated by the North American Light and Power Company of which Mr. Baer is President and General Manager. This Comprises a list of in execess of twenty electrical plants, five artificial gas plants, three or four natural gas plants, several light companies, and steam heating companies. I have been in charge of the rate proceedings of the North American Light & Power Company and have represented them in many proceedings before the Missouri, Oklahoma, Idaho, Indiana, and Ohio Public Service Commissions, as well as in some of the Courts. While for the most part we represent companies in the work, which we do, I have made some valuation reports for municipalities, one being the City of Iowa City, Iowa. I am at present an arbitrator appointed by the City of Charlotte, Mich., in the determination of fair rates to be charged by the new Charlotte Gas Company of that town.

As to my experience and opportunity to judge of the Atlanta Gas Light property: In 1914 Mr. Baer was retained to make a report upon value of the properties of the Georgia Railway & Electric Co., inside the seven-mile zone. I was not in direct charge of the field work for that report, but assisted in preparing the valuation
322 figures. In 1919, we were again employed to make an inventory and appraisal of these properties, which work was done under my direct supervision. This was a more careful and detailed inventory than the original one made in 1914. Again in 1921, Jany., 1921, I appeared before this Commission, and testified with regard to the gas rates, fair gas rate, for the Atlanta Gas Light Company, which involved a study of construction expenditures from the date of the 1919 inventory to that time; and of course I am here again; we were again employed to make a valuation as of Sept. 30th, 1921, in order to arrive at the fair value on the basis of present-day prices, or rather arrive at the fair value of the property today.

With the exception of the work of the original report, all of the subsequent work has been done entirely under my direction and supervision.

There was an inventory and appraisal prepared as of Jany. 1st, 1919, in detail. Because of the shortness of time, we were not able to bring this inventory to date, as of Sept. 30th, 1921, in detail, and I have therefore, used the construction expenditures as shown by the company's books and records to bring this inventory to date. I have taken the detailed inventory made up of Jany. 1st, 1921, and brought it down by dealing with actual facts and expenditures by the Company. We have checked the Company's construction to make certain that such items had really been added. I checked to see whether they were charged at reasonable prices. I have added book costs since Jany. 1st, 1919. I used the book costs as to the past. I will explain later why I did not use the exact book cost. I used figures that to my mind were just and correct figures. In arriving at our net additions to plant and property account from Jany. 1st, 1919, to Sept. 30th, 1921, we examined the construction

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expenditures of the Company for that period, and found the actual costs paid by the Company to be reasonable prices for such materials at the time they were constructed. However, practically all of these prices were incurred at price levels, which were considerably higher than that existing today or rather as of Sept. 30th, 1921. We are on a price level somewhat lower than the price level prevail-
323 ing during 1919 and 1920, and as a matter of fact, during the forepart of the year 1921. In arriving, therefore, at my estimate of the fair cost of reproducing these construction expenditures, I had corrected or revised these figures, so as to put them on the basis of prices existing as of Sept. 30th, 1921, in all cases reducing to some extent the figures shown on the Company's books as the actual cost of construction.

So far as the actual inventory is concerned, the estimate which I will give, is based upon an inventory and appraisal, brought down to Jany. 1st, 1919. And since that date, I have estimated the reconstruction or addition to the plant on unit cost as of Sept. 30th, 1921. I took the physical property as of Jany. 1st, 1919, but I applied the greater portion of the item of detailed costs as of Sept. 30th, 1921, and I have attempted to re-appraise the entire property as of Sept. 30th, 1921. September 30th, unit cost was applied to construction prior to Jany. 1st, 1919. In other words I used Sept. 30th, 1921, unit cost applicable to the entire property as it stands.

These are six volumes comprising an inventory of the physical property of the Atlanta Gas Light Company and of the Gas Department of the Georgia Railway & Electric Company at Decatur, as of Jany. 1st, 1919. Volume 18 comprises a list of the physical property in Decatur. Volume 19 is a list of buildings and structures at station A, which is the generating plant. It also includes a description of the land used and useful in the gas business. Volume 20 comprises a list of plant equipment at Station A, which is the manufacturing plant. Volume 21 lists the works' piping, that is the cast iron mains and the steel piping of the plant at Station A. Volume 22 continues a listing of plant piping, and also includes such wiring as was at the plant at that time; a list of plant, furniture and fixtures, tools, fire apparatus, laboratory equipment, and the like. Volume 23 is a description of the land at the Company's station known as Station B, of the buildings and miscellaneous structures of
324 that plant, of the plant, equipment, piping, and miscellaneous items at the plant. It also includes several storage sheds used by the distribution department, and includes a list of utility equipment. Furthermore a list of general office furniture and fixtures and shop equipment are included in this volume. Finally this volume includes a detailed list of the Company's transmission and distribution system, covering its mains, services, and meters in the Streets of Atlanta.

Under my direction several men from the Chicago office came to Atlanta, I think, in March 1919, and commenced work at the Company's Gas Plant, and all the plant equipment was listed. In the matter of listing buildings, for instance, careful measurements were taken of the foundation walls, floors, ceiling, mill work, and the

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like, and we even went so far as to dig holes alongside of building foundations, in order to determine the depth of the foundation, and the thickness of it. These measurements were all recorded in what we called "Field Books" in pencil form. The plant equipment was listed by indicating all of the data shown on the name plates, where the items of plant equipment were of standard manufacture, with such additional information as would be required to enable one familiar with this class of work to intelligently appraise it. Such items as steel tanks, condensors, and the like, were listed in such detail that the quantities of materials contained in these items could be determined, and that the items themselves should therefore be intelligently appraised. All of the piping of the works was carefully listed and later summarized. Furniture and fixtures, tools, and the like, were all listed in detail. After this portion of the field work had been completed, or rather as it was in process of completion, the men, who actually listed these items in the field, transferred their field notes to what we call Master Copy Sheets, which constitute a permanent record of the physical items. As these items were transferred, and were in this instance transferred from the field books to the Master Copy Sheets, they were checked back to make certain that no errors had crept in. As far as the distribution system is concerned, it is of course physically impossible to go out and
325 measure all of the mains without tearing up all of the streets in the City. The Company, however, has a very excellent record of its main system kept in the form of sectional maps, which show the sizes of mains in the various streets of Atlanta.

These were checked against actual work orders, so we were certain that the maps correctly show the sizes and kinds of mains in the streets. As to services, the Company has a card record of such services, and this card record was checked against the meter record, as we were sure there was a source of gas supply to every meter in Atlanta. In this way we verified the Company's services record, and having done so, accepted that as a correct statement of the services in use. A company, which is operating, must of course keep an accurate record of its meters, so each meter may be read each month, and that subsequently the amount of gas delivered to the consumer may be billed for. In addition to this record, however, this Company has kept for many years past an accurate record of all meters purchased, the location of such meters, and the changes in location of such meters. These cards were checked against the customer's ledgers, so that we were convinced that they represented a correct list of the meters in use, and after we had so satisfied ourselves, we accepted this record, and used it as a basis of our inventory. We have included in our inventory, as well as in our appraisal, an item of paving over mains actually disturbed. We have not attempted to include anything for paving at present over mains, but where we could find that the Company had actually disturbed the paving in laying mains, we included such an item. The records of the Company in this respect were not entirely complete; so we had recourse to the paving records in the City Hall. If we found that paving in a certain street had been laid one or two years, or more years, before

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the main in the street had been laid by the Company, we necessarily assumed that that paving must have been disturbed in laying the main. If the paving was laid after the main had been installed, we did not include anything for this item. If the paving was shown to have been laid in the same year as the main was installed, we did not include anything for this item on the assumption that the main should have been laid prior to the paving in such instances.

326 Analyzing the amount of paving over mains in this way, we found that some fifteen per cent of the mains under paving had actually been laid through paving, that is, of the total paving in the City of Atlanta over gas mains about fifteen per cent had been disturbed in laying the main. In arriving at the amount of paving which was disturbed in laying services, we found the total number of services laid under paving, and at present the total number of services under paving, which gave us what I believe to be a very conservative figure for paving actually disturbed in laying mains, because it was more likely that services would have to be laid through paving than that mains would have to be laid through paving. Consequently, while this method of arriving at the amount of paving disturbed in laying services, is only approximate, yet if it errs at all I am satisfied it is against the Company. After all the field work had been completed, the master copy sheets were brought to the Chicago office, where computations of quantities were made on building materials and items such as steel tanks, and the like. That will then complete what we call the inventory proper. As I have previously explained, the inventory, which has been produced, is as of Jany. 1st, 1919, and we didn't have time to bring it to date as of Sept. 30th, 1921, on the same basis, and consequently we used the Company's construction records as heretofore explained.

I want to say that I did not appraise the land used by the Company in giving gas service. I have no direct knowledge of the value of land in the City of Atlanta, and we therefore asked the Company to retain the services of some real estate expert, who would give us a fair figure. I therefore used in my appraisal the value of the land as fixed by Mr. Forrest Adair, a local real estate dealer. We asked the Company to secure this estimate from Mr. Adair, as showing the value of the land unimproved, but considering the suitability of such land for the purpose, for which it was used. In arriving at the unit cost which was used, and applied, we consulted local contractors on costs of building materials and building labor. As far as the work, which would be done by the Company's own organization is concerned, that is the laying of mains, installation of

327 services, and meter installations, and installation plant equipment, plant piping, and the like, we used, rather we referred to, prices paid by the Company both for materials and labor. We did not, however, accept these without check; but after gathering all of this cost information, we carefully checked it with prices, which we are paying for materials which we have purchased for the plants which we operate, this data being in our Chicago office. Consequently we were able to determine that the costs, as shown by the Company's books, were not excessive, and were

fair and reasonable prices for the items used. In our work in appraising properties of this character, we necessarially also have access to cost records of many companies throughout the country, and this gives us a further check on prices, which we establish and apply as our unit cost in appraisals of this character. Considering then the prices paid by the Company, our own experience in purchasing materials of this character, as well as the experience which we have acquired by reference to cost records of other companies, we fixed the unit cost of materials and labor, which would be used in reproducing the physical properties of the Atlanta Gas Light Company, and this price is such as in our judgment would prevail in Atlanta, and not in some other City in the Country. In describing this method, I have used the pronoun "we" because the matter of preparing such unit prices is not an individual job. Our method is, and was in this particular instance, to have Mr. Cavanaugh, my assistant, to secure local quotations on material and labor, consult the Company's records and the like, and have him return to Chicago and compile these costs on our regular form. After these costs are compiled by Mr. Cavanaugh, he brings them to me, and we discuss them. If I feel that the cost, which he has used, proper, taking into consideration the cost of material, freight, express charges, labor, time keeping, cost keeping, insurance, and such items of expenses, and that they are fair and proper figures, I approve them, and they are used. If I think his figures are in some instances too low, or too high, we discuss these various items, and he either has to convince me I am wrong, or else I convince him that he is wrong. After these
328 figures are thus gone over in detail and finally approved, they are then applied to the specific items in the inventory, and the details thus obtained are summarized and transferred into our final valuation report. In bringing the appraisal up to date, as of September 30th, 1921, we were somewhat limited as to time, and we therefore did not have time to re-price in detail all of the buildings and all of the piping and miscellaneous items such as tools, furniture and fixtures and the like. We did, however, prepare a detailed unit cost of the names, services, and meters, which by themselves represent about sixty-five per cent. of the total cost of reproduction of the physical property. Adding the value of the land, which Mr. Adair fixed as of September 30th, we in that way substantiated in exactly the same detail as it was substantiated in the appraisal of 1919, about seventy per cent. of the cost of reproducing the property. In the matter of plant equipment, we also applied new prices arrived at in the manner previously described. So that, covering transmission and distribution, and plant equipment, we have priced in detail as of Sept. 30th, 1921, practically ninety per cent. of the cost of reproducing the physical property. The building inventory, as may be realized from an inspection of the form handed in, is quite extensive, and we did not have time to reappraise all of the buildings. We did, however, prepare unit costs, and applied these unit costs to three separate and typical buildings. Comparing then the results arrived at on these typical buildings with the results arrived at in 1919 by detailed appraisal, we found per cent. relation between prices of buildings and miscellaneous

structures as of Jany. 1st, 1919, and as of Sept. 30th, 1921, and
per cent. relation was applied to the total of buildings as of Ja
1st, 1919, to arrive at an estimate of the cost of reproducing s
building as of Sept. 30th, 1921. A similar procedure was follo
in the cost of plant, tools, furniture and fixtures, and the like.
sequently, with respect to that ten per cent. of total cost and
production, our figures perhaps are not as accurate as they would
after detailed appraisal. However, it is my judgment and be
they are approximately correct, and that a detailed appra
329 would not show a variation of more than five per cent. eit
over or under from the approximate figure arrived at.

Referring for the sake of the record to page 2 of my exhi
showing the reproduction cost of the physical property, I find t
buildings and structures are shown as of Jany. 1st, 1919, at a t
of $318,888.00. The reproduction cost of these same buildings a
September 30th, 1921, is $305,368.00. A reduction of something
excess of four per cent.

That is reproduction new in both instances. I have an exhibit
the valuation report arrived at in this method which I have been
scribing. There are four copies. It is a valuation report of
Atlanta Gas Light Company, Gas Department only, Sept. 30th, 19
price basis. For the purpose of the record we will identify this
exhibit 26.

After the detailed unit costs had been applied, and summaria
they were transferred to a valuation report such as I have bef
me now marked Exhibit 26. This shows the reproduction costs
the basis of prices as of Sept. 30th, 1921, for the cast iron *steel* ma
in Atlanta, East Point, College Park, and Decatur, by sizes.
the same way it shows the cost of reproduction by various servi
and meters as well as regulators. Further on it shows the cos
reproduce used on each item of equipment at the Company's pl
as well as at the Holder station. It furthermore shows the to
arrived at as representing the reproduction cost of the piping, pl
wiring, tools, utility equipment, office furniture, and the like.
page 28 there is shown a summary of the property in Decatur, wh
was valued by similar detail as to mains, services, and meters
Decatur. The totals of the various classes of property were th
secured and transferred to page 3 of this exhibit, which shows
total cost of reproduction of land, transmission and distribution bui
ings, and miscellaneous structures, plant equipment, general equi
ment, and paving actually disturbed, on the basis of prices curre
as of Sept. 30th, 1921. In each classification the figures show
bare cost of materials and labor, as explained before, inclu
330 ing freight and express charges, time keeping, cost keepi
insurance, and other similar items of expense. There is n
however, included in these figures any of the charges that
ordinarily known and referred to as over-head charges or items
conditional costs. I have therefore applied to these costs of
material and labor an addition of twenty per cent. which repres
my judgment of the fair amount covering such items of additio
cost. Under this heading I include the following general clas

cations of costs, which are necessarily incurred in the construction of a plant of this character, but which cannot be charged directly to any particular department of the property. Under this heading I include such items of expense as legal organization, and general expense, engineering and superintendence, and contingencies, and commissions and interest and taxes during construction. These items vary, and usually vary for particular items of physical property, but it is my experience and my judgment that, taken as a whole, and applied to the total cost of the physical property, they represent fairly the amount, which would have to be spent for these purposes in reproducing a property of this character. I might say, for instance, that in the matter of land, the engineering cost would be perhaps only a small one, comparatively a small item, and yet in the cost of reproducing a plant of this kind, there would be a considerable expense incurred in the way of overhead charges, because in reproducing a plant of this character, the land would have to be purchased at the very outset, so that the engineering staff could design the plant and suitably locate all buildings and equipment. In case of the Atlanta Gas Light Company, this land would have to be purchased probably two, three and possibly four years before the plant could go into operation, so that the item of interest during construction of the plant might readily exceed the twenty per cent. added by me. On other items of equipment the amount of interest during construction would be considerably less, but other items of overhead expense, such as engineering, and superintendence, might be measurably greater.

Taking first of all the total of the fixed physical property of the Atlanta Gas Light Company, that would be as of September
331 30, 1921, for the property in existence as of Jan'y. 1st, 1919, $6,196,209.00. For the property in Decatur, that would be $149,801.00. To that should be added the construction expenditures, as shown by the books of the company, and as corrected by me. So that, referring to page 2 of this exhibit, the total cost of reproduction new of the physical property of the Atlanta Gas Light Company would be $6,758,434.00, and a corresponding figure for the gas department in Decatur would be $167,873.00, which appears on page 28, as of Sept. 30th, 1921. Referring for a moment to page 2, it will be noted at the bottom of the page that the construction expenditures, as shown by the books of the company for the year 1919, were $76,966.00. These were the construction expenditures for materials and labor only. In setting up these expenditures upon its books, the Company adds ten per cent. to cover some of the items, which I include under my allowance for overhead charges. We have therefore deducted from the figures shown on the Company's books, this ten per cent. wherever it has been added, and have then applied twenty per cent. which in my judgment reasonably covers all of the overhead charges, which would actually be incurred. That gave then for the year 1919, $76,966.00. Considering the character of the items installed during that year, and based upon a study of costs prevailing during that year, as compared to costs prevailing on Sept. 30th, 1921, I found a correction factor

of 86.1 per cent., which I applied to the cost, as shown by the Co
pany's books, in order to arrive at the fair cost of reproduction
of Sept. 30th, 1921. The amount, as shown here, therefore,
reduced to $66,248.00. In like manner I reduced the amount sho
by the Company's books as expenditures for material and labor
12.4 per cent. for 1920, and by 7 per cent. for the expenditures for t
nine months of 1921. The same process was used and applied
the construction expenditures in Decatur. It will be noted th
the correction factor for Decatur is slightly different from the c
rection factor for Atlanta, because of the difference in the c
struction and the character of the construction items. The cor
tion factor is bringing down the price from what I estimated
332 in 1919 to what I estimated it *in* Sept. 30th, 1921, rather th
an estimate, that is the initial cost, that was incurred by
Company on those items.

As shown on page 1 of the exhibit 26, that gives me, as my e
mate of the cost of reproduction new of the physical property
the Atlanta Gas Light Company, as of September 30th, 1921,
the basis of prices current as of that time, $6,758,434.00; for t
property in Decatur $167,873.00; making a total physical prope
cost of reproduction new of $6,926,307.00.

I made a personal physical examination of this property and
condition.

I arrived at an average condition per cent. for the physical p
erty, for the combined properties, of 88 per cent. In 1919, w
we made the inventory introduced today, I came to Atlanta, a
in addition to checking over the field work, which was being d
by the field crews, I personally inspected in company with Mr. C.
Smeaton, our field superintendent, all the property at the
plants of the Atlanta Gas Light Company. In 1921, that is abo
two weeks ago, Mr. Smeaton again came to Atlanta to secure d
to bring this inventory and appraisal to date. At that time
again inspected this property, and because of changes in conditio
he made certain corrections to the figures, which I had used in 191
I arrived in Atlanta Thursday night of last week, and since I ha
been here, I have again gone over the physical property of th
plants of the Company, and checked particularly the changes, whi
Mr. Smeaton made, and find them to be correct and in accord wit
my own judgment. I might say in arriving at my deduction fo
a true depreciation I have considered physical deterioration as we
as functional depreciation of the physical properties. I have co
sidered the actual wear and tear above maintenance, and have co
sidered the age of the item, physical decay, and have taken into a
count the elements of functional depreciation, namely inadequac
supersession, and obsolescence, in as far as they have occurre
With respect to distribution system, it is of course physically impo
sible to examine all of the mains, all the services, and the meters.
have, however, interviewed men in charge of the street depa
333 ment, and have found from them what their experience ha
been as to the condition of the mains, services, and mete
I have also seen in some openings since I have been here both o
the previous occasion, and on this visit, samples of the soil, and

n informed that what I have seen is representative of the soil in tlanta. Considering that the mains in Atlanta are for the most rt cast iron mains, it is my belief and judgment, that there is ry little accrued depreciation in these mains. Cast iron mains, hen first put into the ground, take on an initial coating of rust, d after this initial coating of rust has been taken on, there is no rther depreciation in the pipe except perhaps from electrolysis. am further informed that the soil in Atlanta has been chemically nalyzed, and that it has no alkaline qualities, and consequently es not deteriorate the cast iron pipe. Finally I have been told at the Company experiences practically no trouble with electroly- s in its main system. Taking into account, therefore, my general nowledge of the behavior of cast iron pipe in the ground, and nsidering the information, which I have received, I arrived at he amount of accrued depreciation of the cast iron mains, which I elieve to be very reasonable. I may say that I have fixed a condi- on per cent. of 94 per cent. for the cast iron mains, which in my dgment is very conservative.

These figures which appear on this statement, represent my judg- ent as to the correct depreciation on the several items they are ttached to. They are stated too, in detail, as to each individual item f the physical properties. The general condition per cent., of the tlanta property is 88 per cent. and that of the Decatur property 6 per cent., and the average for all of the combined physical prop- rties is 88 per cent.

That makes the reproduction value of the physical property 3,100,750.00. As to whether that includes anything but the fixed hysical property, it includes nothing but the cost of materials and bor, and my estimate of a fair amount of overhead charges for the fixed physical properties.

34 It is my expert opinion with my knowledge of the local situation that this is a fair percentage to put that at. That does ot include anything for working capital. I have arrived at a figure f determining what ought to be a fair working capital for a property f this kind.

Referring to page 34 of Exhibit No. 26, I have shown how I rrived at my estimate of the fair allowance for working capital. have taken from the Company's reports as of August 31st, 1921, aterials and supplies actually on hand, and shown in the ten items st listed on this page. The total of these items is $101,400.00 in nd numbers. I have found by checking back the corresponding gures for some twelve months past, that the average amount carried hand to cover these same items was in the neighborhood of $120,- 0.00, I have therefore assumed that the figure as of August 31st, 21, is a fair and conservative figure, and have used it as one item the make-up of my allowance for working capital. This stuff actually physically on hand, and necessary in the conduct of the siness, it is necessary for the Company to have on hand piping d steel stock, merchandise stock, and items of that character as ed in the physical property for generating gas. Incidentally I ght say that those items include such things as ammonia stock,

tar stock, boiler fuel stock, and the like, which necessarily are a part of the Company's business, and must be carried on hand in order to enable the Company to do business. To these items I have added what I consider to be a fair amount of manufacturing materials, which the Company should carry on hand in order to insure to the consumer continuity of service. In my judgment this Company should carry on hand an average of sixty days' supply of manufacturing materials at all times, so it may be protected against contingencies constantly arising and which might jeopardize its supply of manufacturing materials and consequently of course jeopardize the continuity of gas service. The threatened railroad strike, I think is one of the best illustrations, that can be mentioned, as indicating the necessity of adequate supply of gas manufacturing material. On the basis of gas made by the Company for the past twelve months a sixty days' supply of gas coal would amount to 7,845.8
335 tons, a total cost at the average of $5.51, which I believe is the present price, invested of $43,230.47. So as not to repeat figures, which are already in the record, I will say that I have applied and found the fair cost of sixty days' supply of gas oil for generating, and fuel, coal, and small coke, which is used as boiler fuel. In my judgment, therefore, the fair cost of manufacturing materials, which this Company should carry on hand at all times, as of Sept. 30th, 1921, would be $218,875.39 over and above the amount of materials and supplies, as taken from the Company's books. Furthermore I have added the average between ten per cent of the gross revenue for one year, and one and a half months' operating expenses, to cover gas delivered and unpaid for. In the conduct of the business of a Company such as this, each consumer has received from the Company on an average about forty-five days' supply of gas before he pays for gas, and there is virtually always outstanding against him that amount. To put it the other way, the Company has gone to the expense of manufacturing forty five days' gas supply, which is always outstanding against the consumers, and for which it really never collects, because it is always and continuously behind just that much, and just that period of time because each consumer's meter must first register thirty days, approximately, of gas consumed by him. There is then a period of from five to ten days during which his bill is rendered, and a further period of ten days, which he is given before he is penalized for not paying the bill. In addition to this gas unbilled, there must also be provided some cash, so that the Company may discount its bills, maintain its credit, and have sufficient cash on hand to meet ordinary operating contingencies. It is customary to allow for this purpose about one and a half months' operating expenses, or what virtually amounts to the same thing, ten per cent of the gross revenue for one year. In this case I have used the average between the two figures, which amounts to $206,000.00 in round numbers. My total, therefore, of the estimated fair allowance for working capital is $425,506.46, and I have used in round numbers the sum of $425,000.00. That has been added to the total of physical property, as shown

page 1. Those figures that I have been discussing with the Commission do not include anything for going-concern value.

I believe going-value to be that element of value, which exists in a plant, which has an established business as distinguished from a plant, which has still to create its business. There has been and is no hard and fast rule, no mathematical formula, by which the amount of the going value of a utility company can be determined. In the last analysis, it is a matter of judgment. There are, however, numerous measures, which have been used by various engineers, Commissions, and Courts in arriving at the amount, which should be allowed, and in order to guide me in arriving at my judgment as to a fair allowance for this item, I have used four of these measures. The first of these I call the gross revenue method. That is based upon the assumption that the average gas company would afford to spend and would spend one dollar for each dollar's worth of business, which it could secure. This parallels to a considerable extent the practice followed by life insurance companies, which pay their agents practically the first year's premium in order to get the other years' premiums. Applied to this Company, this would yield as a measure of going-value, the amount of $2,202,-[illegible]7.00. The second method, which I use, is what may be termed the cost-per-consumer method. In securing new business, the utility company—and of course gas companies are no exception—must make expenditures for new business in order to keep their plants growing, and the sales on increasing basis. It is my judgment that as of [illegible]day to reproduce the business of the Atlanta Gas Light Company, would cost on an average $30.00 per consumer. I have analyzed the similar expenditures of numerous companies, though I have not done so in this particular case, and it is my judgment that $30.00 per consumer today would represent the fair cost of attaching new consumers to the system of the Atlanta Gas Light Company. Applying this measure to the number of consumers, namely 32,248, would result in a going value, or in a measure for going-value, of $967,440.00. The third method is what I term the percentage-of-physical-property method. That is based upon the assumption that under reasonable rates, which of course implies a reasonable return upon the fair value of a property, there would be a distinct relation between the value of the physical properties and the value of the business or a going-value for utilities. I have analyzed the decision- of many Commissions and Courts, and have seen the amount allowed for going-value in such cases in their relation to the cost of the physical property. I find a wide divergence in the figures thus applied. In one case the minimum, of which I have a record, where going-value has been allowed, is about 7½ per cent and the maximum about 33 per cent. It is my judgment that the mean of these two figures, or twenty per cent., is a fair estimate and a fair measure for the going-value of the property as arrived at in this way. Applied to reproduction costs of the physical property of the Atlanta Gas Light Company, including the De-[illegible]ar gas plant, this would show a going value of $1,385,261.00. The fourth method is what may be termed the accrued depreciation

method, and that is based upon the belief that the going-value, whe
it is allowed, would off-set any depreciation, which might have o
curred, and it does not affect the efficiency of the plant; in oth
words, it seeks to make up for the injustice, which is done to the in
vestor, by making a deduction from the cost of reproducing hi
property for accrued depreciation, when his plant is in 100% opera
ing condition, and is giving 100% service, and is operating ef
ciently. It is of course clear that, when an investor invests h
money in a plant, he cannot expect and does not expect that pla
to be kept perpetually new, and any attempt to do this, would le
to extravagance in the repair and maintenance accounts, and
course would be reflected in higher operating expenses. Therefe
he is performing his duty to the public, and is going as far as h
can if he keeps his plant in 100% operating condition, and 100
operating efficiency. On this account, some of the regulatory bod
have attempted to make up what they might deduct for accrued d
preciation by adding back this item and calling it the going-valu
and using it as a measure of the going-value of the property.

This method in this particular case would show an amount
$825,557.00. The average of these figures is $1,345,246.00. Co
sidering these four measures, the average of the four figures, a
considering the property as a whole, the situation just as
338 is in *in* all of its features, and the like, I have arrived
my judgment that the fair allowance for going-value, or t
fair going-value of the combined properties is $1,000,000.00.

The total of physical property, plus working capital, plus goin
value, shows a reproduction cost new of $8,351,307.00, and a r
production cost new less depreciation of $7,525,750.00, as of Se
30th, 1921.

In my addition for cost of financing, I cover the cost of secur
the money with which to construct the enterprise, which to m
mind is as much a cost as is the cost of the physical property itse
To reproduce a property of this character, it would be necessary t
float securities, bonds, preferred stock, and so on, and the expense
floating these securities, which in my judgment could reasonably b
placed at eight per cent. of the cost of the physical property, is
real expenditure and an actual expenditure, which would have t
be incurred by the promoters of an enterprise such as this, in re
producing the property today, and consequently is an item, whic
in my judgment should be included in the value of the property
This item is sometimes called condition of bond discounts, and
want to explain my position in that respect clearly. As I understan
bond discount, it consists of two elements, the first being the tru
discount, that is the amount between the par value of the securit
and the amount paid by the ultimate investor; that is, if six per cen
first mortgage bonds of the Atlanta Gas Light Company were sol
prior to the war at 98, to the ultimate investor, the difference be
tween the 98 and par, or 2 points, would represent what I call tru
discount. I have not included that difference in my allowance fo
cost of financing, because, as I see it, that is merely an adjustment
the interest rate, which would enable the Atlanta Gas Light Co

any to sell its six per cent. first mortgage bonds as against the six
er cent. first mortgage bonds of perhaps a larger or more prosperous
ompany. It is of course impracticable to sell bonds yielding say,
13, and paying interest, and consequently to get away from this
mpracticability, the bonds are sold at something under par. The
ifference, however, between the amount paid by the ultimate in-
vestor, and the amount of money, which the banker or broker
39 turns over to the company, is to my mind an actual cost,
which adds value to the property, when the financing is
ompleted, and which should be included in the capital account.
Thus, if these six per cent. bonds were sold to the investor at 98,
nder ordinary financing conditions, they probably would have been
old to the broker at about 92 to 93 or 94, and the difference be-
ween the price which the Company received, and the price which
he ultimate investor paid, would constitute a charge for expense
ncurred by the broker in marketing these securities, and of course
or the profit, which he required for doing so. That charge, as
I see it, is just as distinctly a cost as is the cost of the gas holder,
nd I have therefore included it in my estimate of the cost of
eproduction. In addition to the brokerage charge there are in-
luded other items such as, for instance, the cost of engineer's re-
orts, and accounting reports, which are made at the instance of
he banker or broker, but for which the company pays either directly
r in an added charge on the uart of the broker. There would also
e included such minor items as printing the securities, certificates
f stock, bonds, cost of documentary stamps, and the time and ex-
enses of the officers of the Company or the promotors of the enter-
rise in arranging for the finances. As stated before, I have allowed
n this case, and figured as the fair cost of financing eight per cent. of
he reproduction cost of the physical property, which amounts to
639,244.00. It should be noted that I have depreciated this amount
o $567,457.00, that is because, while I believe that this first cost
hould be capitalized, I believe further it should be amortized over the
ife of the security, so that, when the present term of the present
onds for instance expires, and refinancing or refunding of these
urities becomes necessary, the cost of financing the first securities
ill have been amortized, and there will not be added into capital
account a duplicate cost of financing. Adding the cost of
40 financing to the cost of reproduction, I find the cost of repro-
duction new of the physical property and business of the
ombined properties, as of Sept. 30th, 1921, on the basis of current
rices to be $8,990,551.00, and the cost of reproduction new, less
epreciation, to be $8,093,207.00. As to what in my opinion would
e the correctness of that figure from the standpoint of a purchaser
r the property or a sale of the property, I believe that *they* would
e a fair price to be paid for this property by a purchaser today. I
hink it is worth that.

I have stated that I have had experience in valuing these proper-
es, where they are purchased for bond-holders and Bankers. As
art of our engineering business, we made such reports for Com-
anies, with which we are not directly connected. Incidentally

since the North American Light & Power Company is operated through Mr. Baer's office, I personally supervise or investigate every property we purchase, and consequently we are familiar with what is done in that connection, both for us ourselves and for outside people. It is my judgment that that is a fair value for the property today.

I believe the fair value of this property as of September 30th, 1921, is as shown on page 1 of Exhibit 26, namely $8,093,000.00, in round numbers, and I make that statement because I have used in arriving at that value, and as a measure of value, the cost of reproduction on the basis of current prices. In arriving at the fair value today, I believe that that is the measure to be used, and the only measure which may fairly be used because it is the only measure, which correctly reflects the depreciated purchasing power of the dollar today. If this concern's property, this same property, had been built prior to the war, the cost of reproduction would probably have been about half of the figure, which I have used here, but the cost of reproduction would have been on the basis of 100 cent dollars. Therefore, when it comes to measuring the property today, and its value, I do not think it is fair to take what this cost would have been in terms of different dollars than the dollars we have today than the dollars which the company pays out for operating
341 expenses, or the dollars, which the company receives in payment for gas delivered. Only a short while ago it was quite a common thing to refer to the dollar as a fifty-cent dollar, which simply meant that every one realized that the dollar today was worth about half what the pre-war dollar was worth, both in what it would purchase, and what it would carry in the way of worth as a medium of exchange. Assuming a property such as this to have been built before the war, say at a cost of 1,000,000 marks, I believe it is quite reasonable to assume that no one today would claim that such a property today, if properly maintained, was worth no more than 1,000,000 marks, considering the present value of the mark, and certainly no one would claim that the value of property, which originally cost 1,000,000 marks, is not any greater than one million of the present-day depreciated marks. What applies to the German mark applies in part to the American dollar, which today is not the pre-war dollar, will not purchase as much as the pre-war dollar, and is not worth as much as the pre-war dollar. If, therefore, we must measure the value of the property in terms of present-day dollars, then we must take into account the depreciated purchasing power of the present-day dollar. I will say further, that it is my judgment, that, if the original cost of this property can be determined from the Company's books and records, and assuming money expended by the Company in constructing this property had been fairly, reasonably and honestly expended, it would be willing to accept that original cost as a fair basis for measuring the value of the property today, if that original cost, which was incurred in 100 cent dollars, was translated into terms of present-day dollars, and as a matter of fact, that is all the reproduction theory, which I have used, attempts to do.

I believe that from two to two and a half per cent., an allowance

of from two to two and a half per cent. of reproduction costs of the physical property, is a fair allowance for reserve for depreciation. That depends to some extent upon the utility itself, and because I have stated a percentage it depends, of course, to a considerable extent upon the basis of value used. I would say that on the basis of reproduction costs, which I have used, and which I believe
242 to be the fair measure of the value of the property today, an allowance of two per cent. would be sufficient. I may say further, that this allowance is to some extent a matter of experience and judgment, and that, when an amount is set aside on any basis, it should be considered only as an approximation, which later experience may find it necessary to vary, either upward or downward, as the case may require. I believe that ought to be on the reproduction cost new, and not on the depreciated value, of the physical property. If the property was depreciated fifty per cent. of its cost, that would automatically decrease the reserve, and the investment would not be kept intact.

I would hesitate of course to assume the role of prophet, but I believe from the experience of the past few years that it would be extremely difficult to hazard an estimate as to the future course of prices. I do believe, however, that the experience during the past few months indicates that prices are now tending to stabilize at the present level. To my mind it is quite certain that they cannot go down to pre-war prices as long as the enormous debt, which we now have, is outstanding and has not been taken up. Beyond that point, there are other elements, which have been injected into the inflation of our currency and into the prices of commodities, which cannot be immediately gotten rid of. For instance I believe that it is quite common knowledge that manufacturers in general have stated and have taken the position that they cannot reduce their prices any further until at least, as one element, freight rates are materially reduced. Only a short while ago, it was thought that with a further reduction in wages paid to railroad labor there might be a consequent reduction in freight rates. That apparently, however, has been by-passed for some time, and consequently whatever effect the present freight rates have on prices—and it is a very material one—must prevail in prices for sometime into the future. This exists in the cost of manufacturing material to the Company, which shows that the amounts paid for freight on manufacturing materials exceeds the first cost of the manufactured articles themselves, at the point of production. I believe that prices eventually will go down somewhat from the present level, but I think that the descent from the present level will be very slow and very gradual, and during the next 4 or 5 years will be almost inappreciable.

243 GORDON CAVANAUGH, a witness on behalf of Respondent, testified as follows:

I live at Oak Park, a suburb of Chicago.

I am an engineer employed by the William A. Baer organization, consulting engineer firm.

I was graduated from the civil engineering course of the Michigan Agricultural College, East Lansing, Mich., with the degree of Batchelor of Science in the spring of 1910. I was first employed by the American Bridge Company of Chicago as a draftsman. During the three months I was connected with that Company, I worked as a detail on structural steel and iron. In September of the year 1910, I entered the employ of Mr. William A. Baer, a consulting engineer of Chicago, with whom I have been continuously since that time. The business engaged in by Mr. Baer has been explained by Mr. Luick, and I will, therefore, omit that part of my qualification. My experience with Mr. Baer involves practically all branches of the business as conducted by him. The major part of my time, however, has been spent in the valuation and rate-making department. My duties in this department have included the direct supervision of inventory work in the field, the making of cost studies, the determination of unit costs, the superintending of quality calculations, pricing, summarizing of various reports, the determination of overhead charges, working capital, going-value, cost of financing, and so forth. I have prepared studies of rates for gas, electric, and heating service, involving, in addition to the inventories and valuations of physical property, analyses and studies of operating results, conditions, and expenses; smaller analyses, and other pertinent features, which must be considered in arriving at fair rates for service. I have furthermore at various times presented such studies in rate litigation proceedings before various public utility commissions. I will omit from my qualifications the list of the more important work, which I have been employed upon, because the list, which Mr. Luick gave covers practically the same amount of property. My present position is that of Chief Assistant to Mr. A. J. Luick, who is the head of our valuation and Rate Department. In addition to the consulting engineering work, as outlined, and as
344 explained by Mr. Luick, operation of a large number of utility properties is conducted by our organization. By reason of the fact that we are operating these various properties, I am familiar with operating conditions, results, and costs of construction as involved in such operation. All matters pertaining to rates for the properties which we operate, as well as for many others, are handled by our Valuation and Rate Department. During the time that I have been with Mr. Baer, I have assisted in the design and construction of gas plants, and distribution systems, and have had direct charge of considerable construction and rehabilitation work in the field.

As Assistant to Mr. Luick, and acting under his general direction, I have had charge of a large part of the detail work in connection with the making of an inventory of these properties of the Atlanta Gas Light Company, as of Jany. 1st, 1919, and also have made up unit costs as of September 30th, 1921, as applying to the different classifications of property shown by the inventory. I personally obtained from contractors in Atlanta quotations on the costs of labor and material involved in building work, and also quotations on the present costs of building materials in place. These costs were

used by us together with other information, which we have in our possession, in making up the unit costs as applied to the inventory. In the matter of distribution system, covering the mains, meters, and services, I obtained personally from officials of the Company the actual rates of wage, which they have been paying, and are paying, the various classes of labor involved in the construction of the distribution system. I used these quotations and this information, as secured, in arriving at fair unit costs as used in this instance. I also obtained through the purchasing department of the Georgia Railway & Power Company quotations on the present cost of cast iron pipe. These quotations were made to the Company, and represented actual market values as of date of our valuation. I also secured some quotations on prices of wrought iron pipe, or so-called steel pipe. I furthermore determined from the Company's records discounts, which they are now receiving, as applied to gas meter prices. Because of the combined buying power, which this
345 Company has, they are enabled to purchase gas meters and other materials at much more favorable rates than would a single isolated company. We have taken this matter into consideration in arriving at our unit costs as used in inventory.

This data I have got up was used in these actual figures in this inventory and appraisement. The inventory was made largely under the direct supervision of Mr. Luick. However, I had charge of the office end of the work, which consists of calculations, of quantities based upon the field dimensions, and the making up of the unit costs; that is, the application of the unit costs to the quantities, as indicated by the inventory; the application of the condition per cent, as found by Mr. Luick, to the reproduction costs, in order to determine depreciation costs. I personally made up the unit costs used in the distribution system. The other unit costs I had direct charge of, but did not personally make the figures.

I have been over them with Mr. Luick and he and I coordinated about it.

It is my judgment that the inventory, as presented, represented an accurate listing of the property of the Atlanta Gas Light Company and of the Gas Department of the Georgia Railway and Electric Company, as of date Jan'y 1st, 1919. It is furthermore my judgment that the unit costs applied to this inventory and the other charges, which have been added, are fair and proper and represent fairly the value of the property as of Sept. 30, 1921.

I worked together with Mr. Luick in the determination of the items of working capital and going-value. The figures, as testified to by Mr. Luick, therefore represent my judgment as well as that of Mr. Luick.

I think these figures here on page 1 of this exhibit No. 26, is the fair value of this property as of Sept. 30th, 1921. In your judgment I think the prices, on which this value is based, are sufficiently stable to make this a fair value for a reasonable length of time in the future.

A. J. LUICK, a witness for the Respondent, having hereto-
346 fore testified, was recalled to the stand in compliance with the request of the Chairman of the Commission, and testified further in brief as follows:

In arriving at my estimate of fair value, which is the exercise of sound judgment, reasonable judgment, as to what I considered besides reproduction costs, I considered the original cost, or rather the effect of the decreased purchasing power of the dollar, the effect which that would have upon original cost. I believe that the original cost in terms of the dollars, which prevailed when the property was installed, does not reflect the fair measure of the value of the property today, and therefore I have used solely as a measure the reproduction on the basis of present day prices. I had no knowledge of the capitalization of the Company, so I could not use that measure in so far as perhaps it should be used in accordance with the rulings of Courts.

Assuming that the prices on Sept. 30th, 1914, might be about on the level which prevailed for a period of years, say from 1910 to 1914, a five year average period, which figure I carry in mind, the prices as of Sept. 30th, 1921, would be about eighty per cent over the prices prevailing for the five-year period prior to the war, 1910 to 1914 inclusive.

They are about eighty per cent higher now than then. Taking the last five years, I would think that the prices current of today would be somewhat lower than the average for the last five years, because 1919 and 1920 and the forepart of 1921 showed prices considerably over the present-day level.

While I cannot estimate the proportion of construction now in existence, that was made prior to 1915, it is true that the bulk of the plant was constructed prior to 1915. I think that is correct. I can get an accurate historical cost since 1915. Business conditions are not generally normal now. Business has been very hesitant during the past six to twelve months, and everybody is trying to feel his way around. I believe that there is more confidence developing
in business today, and that people in general are beginning
347 to feel that we have about reached a price level, and that we are going to be able to do business on the present level. In other words, I think a good deal of the hesitancy on the part of business was the fact that nobody knew just where we were going to, where this decline was going to stop. Now, I believe, that people are beginning to think that prices are about to stabilize at this level, and consequently they can go ahead and invest money, and business will resume fairly normal magnitude within a short period of time.

I assisted in the making of inventory and appraisal of the gas property in 1914, as of March 18th, 1912. That was valued not exactly upon the basis of prices prevailing March 18th, 1912, but on the basis of an average for about five years, which I think would be practically the same. That was of course prior to the war, and ran on the pre-war basis of values. Which fairly represent to an extent the historical cost of the property, on a fairly average basis. If you are asking me for my own experience, I will say, where it has been

possible to determine original costs from books, and compare that with pre-war costs of all properly installed prior to the war, there was not a great deal of difference between the original cost, and what we call a five-year pre-war cost.

Considering the cost or value so arrived at, and considering the connections that have since come in, the cost or value of material and labor, which entered into the construction of their property, as it existed as of that date, and adding to it the additional property, which has been acquired by the Company, that value would be substantially the same as the value you have fixed there as of prices current September 30th, 1921. In other words, I would take the value of the property installed prior to the war, and put that in terms of the present-day dollar, and add to that the expenditures during the war. If that is the case, I believe that the results arrived at would be substantially the same, because it is my judgment that the average of prices controlling during the war would be practically the same as present-day prices; and assuming that construction work had been carried on uniformly, then I believe that the result would be very close to the figures, which I have used as being the figures based on present-day costs.

348 If there were no regulation of rates of the gas company, as to what I think that gas could be sold or would be bought by customers at a rate that would yield the cost of service, including a reasonable rate of return on the value you have stated, as the value of this property. Am I correct in saying that the operating expenses are about $1.10 to $1.15? As you answer that it is $1.15 to $1.18, may I ask you also what your sales would be in cubic feet for twelve months? As you answer 1,350,000,000, assuming the operating expenses to be $1.15 before depreciation, and taking depreciation and return on the basis of my figures, the rate would be somewhere between $1.75 and $1.80 roughly figured, to yield a minimum return of 8 per cent, on the depreciated value. The figures are $8,093,000.00 in round numbers. That includes my depreciated value of fixed physical property, of allowance for working capital, and of allowance for cost of financing, and allowance for going-value. I think that $1.75 to $1.80 rate would yield over and above depreciation and operating expenses and taxes, eight per cent on the valuation I have here, and answering the first question, it is my opinion that that is not a prohibitive rate.

As to what in my opinion, is a reasonable rate of return on the gas property, particularly on the property and business conducted by the Georgia Railway & Power Company, the gas business conducted by it, sufficient to induce people to put the necessary capital into such a business, it would have to be somewhere between eight and ten per cent today. On our own properties, we are paying very close to ten per cent for the money we are securing, and it is of course quiet reasonable, for we cannot make any expenditures for construction, if we are not satisfied that we are going to secure a rate of return at least equal to, and properly in excess of the cost of the money to us. I am not familiar with the cost of money to the Georgia Railway & Power Company, or perhaps I should say more

specifically the cost of money especially to the Atlanta Gas Light Company, for it to stand on its own bottom, and that I think is the basis, which should be used in determining the rate of return,
349 that should be allowed, but assuming that it could be financed at somewhere between eight and nine per cent, that its construction money could be secured, then I think the rate of return should be at least equal to that much, and possibly a little bit more to allow something to the stockholders for their effort.

As to what is the value of the gas service to the consumer, that depends on what the consumer would have to pay for a service which would duplicate the work that gas will do for him, with the same convenience and comfort. I believe that would involve quite a study of the prices of kerosene or wood, or coal, in Atlanta, which I have not made, but from my general experience I would say that, considering the convenience and cleanliness of gas service, and the fact that gas is available at all times, no coal to carry, and no wood to carry, and less hazard from fire, as against for instance the use of kerosene and the like, it is my opinion that any rate for gas under $2.00 would be a fair and reasonable rate for that service. That is from the customer's standpoint, as to the value of the service, without reference to the cost. That is true, and it is my belief that, if this Company were to charge $2.00 for gas, and the Commission were to authorize it to put into effect a $2.00 rate for gas, while some consumers would undoubtedly discontinue the use of gas temporarily, either in whole or in part, within a short period after having tried some other form of fuel, they would come back to gas despite the $2.00 rate.

HENRY M. BRINKERHOFF, a witness for Respondent, testified in brief as follows: My residence is in Englewood, New Jersey, a suburb of New York, and my place of business is New York City. I am a member of the firm of Parsons, Klapp, Brinkerhoff, and Douglas. I graduated from the Stevens Institute of Technology as mechanical engineer in 1890, and I spent two years as a workman on public utility properties, learning the business. I then got into the designing and construction and operating work, and was engaged upon that until about 1906, or 1908. Then I got into the Managerial part of the business; for instance, became general manager of the Metropolitan West Side Railroad of Chicago, and stayed in that position until 1906. Then I joined Col. Parsons and Mr.
350 Klapp in forming a consulting engineering firm, doing a general engineering business, taking Mr. Douglas in later. Since that time I have done all sorts of engineering and valuation work. My principal branch of the firm's business—we divide it around amongst the firm partners—is the public utility end, and I do valuation and appraisal work, designing and building of plants, and we also from time to time operate groups of properties from our office. That is also my principal part of the business. I assist my partners in the preparation of bids. We bid on construction work at times. I have had experience in valuing property for financial

interests. We do examining and reporting for financial firms, such as Drexel, Reed & Company in New York, and Harris Forbs & Company, and others. I have done this sort of work for the municipalities or the public's side of it. We have made appraisals and done work for cities and public bodies. I have been called to testify on these matters, before Commissions and in Court cases, and in various proceedings of that character. I have not been confined to any one side of the question. I should say that my employment was about equally divided. I have appraised properties for corporations, and also for cities. Perhaps the largest appraisals I have made have been for cities.

As to what opportunities, if any, I have had to judge of the properties of the Atlanta Gas Light Company, and how it came about, I came down here originally in the interest of the people, who were promoting the North Georgia Electric Company, one of the predecessors of the present group of companies that developed Tallulah Falls. I was then interested in ascertaining the probable market for electric power, and I looked into the gas business here incidentally, being the competition they would likely find, as opposed to the electric current. That must have been about Jany. 1909, or 1910. I then came back in 1914, for the bankers, who were considering the financing of the consolidation, which has since resulted in the Georgia Railway and Power Company, and the leasing of the properties within the seven mile zone. At that time I went over all of these different departments, which are now called departments of this Company, and that included the gas. We made careful
351 investigation because at that time the financial interests that were going to invest in it on consolidation, were seeking this information. It was on our report that they based their financing.

I have been down here from time to time informally, but in July of this year, I was asked to come down here with our men, and make an appraisal of the entire property, which we are still working on. We have a force of men working here now, and have been working steadily. We were asked to do that by Drexel & Co., for the purpose of establishing the present value of this property, on which they can judge for their financial plans in the future. We were employed by the corporation itself to do it. We were employed by financial interests with the view of financing it hereafter. We represented the bankers. In making that investigation for the bankers, I have had occasion to investigate this gas property, that is part of the work we have been doing. We have been asked by officials of the Company, to expedite that matter, so that we could use a portion of the work, have it finished up sooner than we would otherwise have done, and testify today.

I prepared a condensed exhibit. This is an appraisal of the gas plant and system of the Georgia Railway and Power Company as of September 30th, 1921, compiled by Henry M. Brinkerhoff, partner, and R. U. Fitting, gas engineer, of the firm of Parsons, Klapp, Brinkerhoff & Douglas, consulting engineers, 84 Pine Street, New York.

This condensed exhibit, which probably in its order should be marked Exhibit 27, was filed with the Commission as part of the record in this case.

We have approached this subject from the standpoint of checking all the work, that has been done, and at the same time such clerical, or what you might call routine, work, as we could identify without a duplication of such compilations, and for this purpose we took the inventory of the property as prepared by Mr. Baer's staff, and
352 as testified to by Mr. Luick, and Mr. Cavanaugh, and we made this time, as we did in 1914, what we call a test check that is easy to say, we have taken certain credits for improvements important items, and have checked them in the field, and then compared them with the Baer inventory. After having made such a comparison, and finding no errors, we have used the inventory for the purpose of identifying the property, as of Jany. 1st, 1919; adding thereto the Company's construction record of what has been added to the property since that time. The way that we have done that is to check back this construction record from the present existing property records against the 1919 inventory and also to compare the units in the field with the list as made up in the Baer inventory. That gives us the present existing list of property, which appears to us to be a double check on what has been used by Mr. Luick. That we have done for this purpose, and for the purpose of our general appraisal which is being made in this manner. The land values we have not attempted to analyze. Not being real estate experts, we have taken the prices as placed on it by Mr. Forrest Adair. The reproduction costs of transmission and distribution system, which constitutes the largest single group of items, amounting to a little over $4,000,000.00, we have valued by taking this present inventory of the property, which was produced by adding what the Company's construction records showed had been added since the Baer inventory of Jany. 1st, 1919, to that inventory, and we have priced those by applying current figures, which we have been collecting in connection with our entire valuation of the property. We have a staff here, and I am having the inquiries made from contractors, and those who supply materials, getting discounts, discount rates, and getting general price conditions.

We applied them both to the inventory made in 1919 and the additions since. We produced an inventory we believed to be an inventory of today, and we priced that at current prices, so as to give us the result without any calculations. Now in this group, there is the item of gas meters, for instance, of which there is a very complete record in the Company's operating department. That amounts to some $700,000.00 and on that we are able to make our own
353 pricing and determination. So we have tried, as far as possible, to make our work constantly independent, except so far as we have accepted the inventory, where we have checked it. These are the same prices and values we are making for the purpose of reporting to these bankers. This is part of the work, and we will incorporate it in our general report. Buildings and miscellaneous structures we

have treated in the same way; transmission and general equipment, we have determined in the same way; paving actually disturbed, which Mr. Luick testified amounted to about twelve or fifteen per cent, I think he said, of the entire piping of the system, we have looked into his method of examining the records. It is a long tedious job to go all through the city paving records, and we have not attempted to do that, but his methods seem to have been very carefully carried out, and the items we have been able to price and a portion of it we have been able to identify, because we have the Company's records since his 1919 inventory. So we have been able in that way to appraise them intelligently. That gives a general idea of the way we have proceeded in computing the present reproduction cost of the property. Then we have made an examination of the property. I say "we," because I have a number of men working here, but I particularly brought Mr. Fitting down with us, who is our gas engineer, attached to our New York staff, and he was down here with me in 1914, when we made our examination at that time, though he was not then in our employ. He was representing Harris-Forbes, one of the group of bankers, and he came into our employ about six months afterwards. He collaborated with us, and we used his figures at that time. He has been down here with us on this valuation, and has helped in the valuation shown in these figur-s. That brings us to the condensed tabulation, which I have prepared, which is the fourth page of the exhibit, and if the Commissioners would like some extra copies, I have some of that page. That is just the 4th page of the exhibit. Now the first column is the reproduction cost new, and the first item is there as the value of land, which is placed as I said, at Mr. Forrest Adair's pricing. The transmission and distribution system is $4,166,629.00, which is the pricing of the inventory
354 arrived at as I have described. The next item of buildings and miscellaneous structures, amounting to $322,486.00, was priced by us from a checking of Mr. Luick's inventory. Plant equipment is arrived at in the same way, and also the general equipment. The total of those figures amounts to $6,770,985.00. To that has been added the Decatur system at $167,873.00; making a total of $6,938,858.00, as the reproduction cost new of the total physical property. That does not include anything for working capital, or going value.

I made an estimate of the working capital, based upon the idea of determining what the Company has actually tied up in the business, and to do that, I made a personal examination, with the assistance of some of my men, of the books, from October 1st, running back twelve months, and ascertaining the balances carried in the storehouse account at the end of each month of materials used in the manufacture of gas, that is in the gas department. Then I determined that for a year, and averaged it per month. Then I went back through the operating expenses, to ascertain just what the pay rolls had amounted to month by month for those same twelve months, and also what materials were used in the manufacture of the gas in those months. That gave us the material held in the general storehouse, ready for use, the current amount used during the month, and pay

rolls paid out during the month. Then we examined the question as to how the Company collected for the gas supplied during a month and found that they were carrying that gas forty-five days. That enabled us to determine that the actual storehouse account, plus the actual amount of money tied up in pay rolls, and operating expenses, plus a bank balance for the carrying on of the business, and paying bills, amounted to $418,443.00. It is not a calculation but a compilation of actual figures from the books. That is what was actually done in the last twelve months, and it appears to me that that is a fair way of arriving at that cost, that is, what the Company actually did under operating conditions and probably adverse conditions because we know it was hard to get materials during that time, and the storehouse account does not seem to be excessive. That is
355 what they actually did employ during the last twelve months in carrying forward this business, that amount of average. I went through it account by account, all back through these months and satisfied myself those were the facts.

In my opinion that is a reasonable amount, and nothing abnormal or unreasonable about the account, to indicate that it would be different at that period, or should be. I went back and put the year 1914, and ran that through, and I found that the proportion of working capital used at that time, which was a pre-war year, as far as prices were concerned, bore a very close proportion to the out-put of gas at that time, as compared with the out-put of gas this year I worked on. So it looked as if the operation had been consistent and systematic, and bore about the same relation to the business done.

That going-concern value I tried to determine, or I did determine, on the same general lines, that is, trying to ascertain what it would be fair to state the record showed the Company had actually expended in the building up of their business, and I took the charges on their books for fifteen years, commencing with 1920, and running back to 1906, both inclusive. I found from that that on an average they were expending in the getting of new business, or as it is sometimes called, the connecting of new customers, an average of $21,264.00 per year for the period. That was an average annual expenditure, and they connected up an average of 1,280 customers for the year, a total for the priod of 19,202 customers. That varied year by year. In some years they got over 2,000, and in some years they ran down to 500, but on an average it seemed to go along very much in proportion to what we know the business conditions of those years were. That money, if we consider it as having been a capitalizable expenditure, would carry interest, and I made the calculation of the actual amounts of money year by year, and the interest on them, and adding the two together, I found it amountd to $26.22 per customer connected during those fifteen years. That compares with the figure, that I heard Mr. Luick testify to this morning, of $30.00. If you leave out the item of interest, then you get a cost per customer of $16.58 for each customer connected on an average through-
356 out the fifteen years. Now, if you take those, and multiply them out, you will find with the total number of customers, that they have at present, of 32,153, at $26.22 apiece, you will arrive

t an item for this part of going-value of $843,051.00. If you take he expenditures, as shown by the books simply, and allow no in-erest upon them, you get a figure of $533,096.00. That would be he cost of attaching the entire business as the Company now has it, s their books actually show it, according to their account. Now here is another item, as we are approaching this subject from an in-ventory of what exists today, which means that we have simply taken what we can go out and find today, and price it, and that is, I ave put in here abandoned equipment, that is, equipment, which he Company owned, and which they tore out and scrapped in order o replace with some new or large equipment, and which does not ppear to have been treated in any way that would meet this situ-tion. That figure I had to arrive at through examination of where hey had torn out machinery, and plant, and it was historical in the ense that I had to inquire the reason for this, and what had been one about the items, that were readily identified, and I found within he last, I would say, seven or eight years, it amounted to about 99,000.00, pricing them at the value that they had at the time they ere torn out, not their original cost, but the value left in them, hen they were taken out. Then there are some other items, which think could fairly be allowed in there, and this is the only item, hat I have really estimated. I have allowed for during the period f this Company's history for these items, as shown on that exhibit, thousand dollars a year. That seems to me to be a very modest m for this item on this exhibit. The cost of attaching the cus-mers, as shown from the books, is $833,096.00. That is without al-wing any interest on this money. Then $99,000.00 for abandoned uipment, and $67,904.00 for the other miscellaneous items, mak-g $700,000.00, which I have used as the going-value. I think that a fair and reasonable figure to put on it.

As to what that gives for the total reproduction cost as of date September 30th, 1921, new, that appears on the 4th page of the exhibit, and would be $8,057,301.00. Deducting depreciation it would leave $7,144,253.00 as the depreciated present condi-n of the property. As to what percentage, I have figured that, at was 88.6 per cent including these two values; that is, I would e to say, that is not correctly the physical condition of the prop-ty. That is the ratio between those two figures, which includes this ing-concern value. The figures above that, 87 per cent, is the ysical condition of the property. I don't see any reason for de-ciating working capital, and going-concern value. This does not clude anything for the franchise, or financing. I have made no owance for either. In making my report to the bankers as to the r value, I will present these figures to them—$7,144,255.00, as the r value of this property, as of September 30th, 1921, for the pur-e of their financing. That is my conclusion after considering the ole situation, the original cost with knowledge of it from the time as down here in 1914. My previous investigation of it, my sub-uent investigation of it, my familiarity with the property, my owledge of such property, and the whole situation, I state that the present fair value as of date September 30th, 1921.

As to my opinion about the stabilizing of prices, under the present situation, to get a different slant on that, I would state in this way. Our firm bid on construction work from time to time, quite large plants, and up to about May or June, I should say we were bidding very close on the gamble that we were going to get better prices, that is, we figured our profits just as close as we could, because we felt we had a pretty fair gamble that we were going to get prices better than we were then figuring at that time. For instance, last Jany. we made estimates for the purpose of determining what we thought properties could be built for, and we took a pretty close figure on them, expecting to get the profit we will say out of a further decline in prices, but since about May or June, we have not been doing that, and we are very loth now to take any chances on any further dropping in prices, that is depending upon it for a construction, that will run through the next year, or year and a half, or two years. We don't think it would be a wise business gamble. I don't know
358 whether that answers your question, but it gives you a slant on the view that we take of it, that is the way we handle our business.

We are building a hydroelectric plant at present for the International Paper Company at Glen's Falls, New York, and that involves an expenditure of about three and a half to four million dollars. We are building a large concrete dock in Havana harbor, down in Cuba, which involves about three million dollars. We have recently completed some plants in Canada, industrial plants, for the handling of oil, and we do that class of work. We build plants of all kinds. That is about half of our business.

We have built a plant at Erie, Pa., for the Erie Gas Company; for the Mohawk Hydroelectric Company we built plants in New York. We built five or six plants during the war, which are known as ferro-silicon plants, for use in making steel castings. During the war I built personally two dry docks for the Emergency Fleet Corporation in Norfolk Harbor. Then we have built additions to going-concerns of various kinds. Those are typical. In connection with the construction of the Subway in New York, our senior partner Mr. William Barclay, was the engineer, who designed and built the subway in New York. He does that heavy work. He is a civil engineer, and I am a mechanical engineer.

I appraised the elevated Railroads in Chicago, for the City of Chicago. The Mayor and Common Council appointed a Board to devise a plan to form the basis of a city-company agreement. They have an agreement between the City and the operating companies there. This was to enlarge that agreement, and in doing so, we had to establish a value for the combined elevated and subway lines. We valued the elevated properties at $80,000,000.00, and with the valuation of the street railways, the total was about $114,800,000.00. We valued for the City of Louisville, the water-works. The City of Nashville had appraised their water-works, and filtration plants, and the municipal steam plant, that supplied lighting. I valued those for them. I made valuations in St. John, New Brunswick, for the group of

properties there. No, that was not a city job; I was on the company side there.

359 As to whether I have seen and know enough of this property, and its history, to have an opinion as to the manner in which it is operated, as to whether it is efficiently and economically operated, we went into that in 1914 very thoroughly, because it was one of the features of consideration of the lease. At that time we felt that the records of the Company showed it was being economically and well managed. The conditions, that I personally observed—and I think Mr. Fitting, our gas engineer, is of the same opinion—are such that I think that it is very well managed, and that it is a very well handled and operated plant at this time.

Mr. Fitting participated in arriving at these estimates here in this exhibit. He gave special attention to the physical elements of the estimates we are making, and he is the man that we use for our gas work, especially for our gas work. My estimate of going-value, so-called, is based upon a study for the last fifteen years of the cost of attaching the business, and then a resultant capitalization per customer.

The way it appeals to me is this. That the Company is operating a system, which they are constantly adding to by devoting their energies to increasing its utility to the community, and thereby enlarging the scope of their business. If they stood still, and did not spend this money, then this cost would be saved to them, and would be additional revenue, which they could divide among their stockholders. So from that view point, it is really the stockholders' money they are putting back into the property, in order to develop the business, like advertising would be by a man running a department store. If he didn't carry on his business in a progressive, energetic way, he could save that money.

As to whether that work, if in the monthly statement, or annual statement, this $21,000.00 average cost of attaching business, is absolutely included in the operating expenses, and therefore you say theoretically taken account of in rates and repaid out of rates as an expense, not as a capital account at all, I would answer yes then you would get back to the old question of whether the amounts charged during this prior period had been adequate. Now,

360 for instance, taking the question of depreciation, I don't find that this Company had been charging for any depreciation prior to 1916; in other words, they were operating as most other companies did, and have operated in the same way in the 90's, that they did not need to set aside depreciation, and if you didn't set aside adequate depreciation, you were not charging your customers for the use of your property the full amount that they should have contributed. I think that would be quite an off-set against an interpretation of this as an operating expense.

With the assumption you stated, it is true there would have to be an off-set of some character in that way. Except this going-value is a thing that is inherent in the property in a going-concern as this is, as distinguished from the property, that simply consists of mains and holders, and the various physical equipment. That is

what we are asked to do here. We are asked to go out on the street on this Company's property, and list what we can find there a physical property. Then we price that at whatever it cost to re produce it, that is, to produce it then. Then we depreciate tha figure, to get at what the worth would be in its present physical con dition. Now then, if you did that, and stopped right there, an did nothing more than that, and had no customers connected, yo would have no earnings until you had expended some of the mone to educate the people of Atlanta to the use of gas. Suppose fo instance you could assume that Atlanta had never used any ga that people didn't know anything about it, didn't know the con venience of it, or anything of that kind; you came in here into a fresh territory the size of Atlanta. It does exactly what we ar doing in a night, that is, put down those mains, put your holders up, put your manufacturing plants up, create your plant for doing you business right up to the customer's lines. You would then have to g out and spend such a sum of money as this before you could ge everbody connected and get the business going. What I have don here, as I look at it, is simply to ascertain what would be the averag cost of acquiring those customers, as shown by the experience
361 of this Company, in this particular city. Possibly, if you took such a condition as I have described, and you were very skillful in the way of propaganda and advertising, you might possibly connect those customers a little cheaper.

Question by Chairman Candler: I am afraid you don't quite understand the mental attitude I occupy. I don't differ with you about there being an added value for getting that business. It is the method I was inquiring into. There is more value to a plant abundantly supplied with customers for its product. It was only the method, by which you ascertained that, that I was inquiring about, and not the fact that there was not value.

Answer. I misunderstood your question, of course. Of course in doing this, I feel that I ought to base any statement I make to this Commission upon local conditions, and that has appeared to me to be a way of ascertaining quite clearly what the condition was as to the cost of connecting customers, by going into the history for fifteen years, rather than express an opinion based upon my general knowledge all over the country.

As to how in my opinion unit costs of the materials used in the construction of the gas plant, as of September 30th, 1921, compare with the unit costs, which would have prevailed in 1914, when I examined this property, the prices now are higher. Let me say that I think I can get at that in another way. The prices at the peak of the war period, if you should put them at say 100% above 1914, they would have come back about half way. Mr. Luick's estimate of 80% is not out of the way, because the peak, that I speak of, was over 140%. That was about the 1920 period. As I say, they have come back about half way, and that would agree substantially with my statement. As to what proportion of the plant approximately, as it exists now, was in existence and in operation in 1914, I don't know any way that I could state it positively, but my impression is

that probably 65 or 70 per cent. of the present plant was in existence at that time. That is just a rough quick estimate.

The value of the real estate is shown as $222,000.00. All
362 the larger units of real estate that I think of at the moment that are in use are owned by the Gas Company. I have not attempted to value the real estate at all. I have simply accepted Mr. Adair's prices. I don't know whether it is all in use for gas Company purposes now, except this is classified as used and useful in the Company's business. As to how gas here in Atlanta compared with the gas in Philadelphia as to quality, their standard is here 575 B. T. U. For Philadelphia I have those figures here—I don't memorize them—I don't happen to have Philadelphia, but I have a good many other cities. I thought you would be interested in southern cities, and I made note of those in particular.

Mr. P. S. Arkwright: I think it is 530 in Philadelphia.

The Witness: I do not know the candle-power of the gas used here in Atlanta, manufactured by the Atlanta Gas Company, the customary standard today is on the B. T. U. basis. Candle-power is not the usual basis today. I do not know the candle power of the gas furnished by the Philadelphia Company. I know in a general way how this gas is made in Atlanta, in proportion to coal and water. I had rather have Mr. Fitting to answer that. He is our gas expert. I am not familiar with the fact that the Gas Company in Philadelphia is owned by the City.

By Dr. Huff:

Q. The rate for gas in Philadelphia is $1.00 per 1,000 cubic feet, and 25% of the gross amount is returned to the City of Philadelphia, the company only receiving 75 cents for each 1,000 cubic feet. How do you reconcile those figures with the City of Atlanta.

A. Well, I would have to know just what the conditions of operation are there. As I remember now, they are having and making quite a protest now as to that gas price. I think that matter is up for litigation at the present time, although I am not sure.

Q. That is the present day price in Philadelphia today, $1.00. I was asking you how you would compare that price with the price in Atlanta, of $1.65, if the gas there is about as good a gas as in this City?

A. As I recollect it, that plant in Philadelphia is a very modern and very large plant, and of course the city is a great deal bigger.

There might be many conditions there, that would make
363 it possible, although they may be operating at a loss, if it is a municipal operated system. If it is a municipal operated system, I would want to scrutinize it very carefully as to how they were operating their books. Most of the reports are not comparable to the books as kept by public utility corporations. I have worked on both sides of that question. The average daily consumption of gas here varies considerably. As to what is the total value of the physical property then as it is on Mr. Luick's exhibit, he has for the reproduction cost new, included going-value, and working capital, $8,351,

307.00. The depreciation amounts to 90 per cent. As to whether if I were in the market at this time for a property of this nature, I would be willing to put that much money into this plant here myself, I would consider it the fair value on my figures. My figures are depreciated $7,144,000.00. Luick has $7,525,000.00. I think this is the fair value, that I would report to my clients as a basis for their negotiations. These are not book values. These are reproduction costs, by taking an inventory of the property, and simply pricing it. We arrived at those prices by making inquiries from contractors, who build works of the same character, manufacturers of supplies for this district to customers of this character, and so on.

I have made inquiries here in the City of Atlanta as to the value of certain properties owned by the Gas Company,—we have made quite an extensive investigation of that, and have the prices compiled on our regular forms.

I was sent here by bankers in Philadelphia to appraise this property, Drexel & Company. I have not thought of billing them so far. I assume that somebody is good for it. As to whether a small concern like a little plant down here at Albany, Georgia, in particular, can sell gas as low as $1.25, Atlanta, should be able on account of their output, to sell gas cheaper than that. In those prices, you cannot go by the size of the City, because it would make a great deal of difference as to their paving conditions, and all of the City conditions. In some of these small plants, the man that owns
364 them, runs them, and does not charge his salary, and the gas is approximately low as to what department equipment, such as stoves and ranges is credited, business getting is charged with a proportion of the amount, and this is true where they are used in getting new business. I went to the accounting department, and got the records on which these figures were compiled.

About this going concern value, I give an opinion as to what it is worth as a fixed and connected and *appertinent* part of this property, irrespective of who paid for it. That is a fair valuation of its worth. By the mechanical method I used in arriving at it, I convinced myself as to the class of figures that ought to be put in.

365 RALPH U. FITTING, a witness for respondent, testified in brief as follows:

I live in Brooklyn, New York. I am a consulting engineer, I have been such for fifteen years. Before graduating from the University I was in the distribution department of the Industrial Gas & Electric Company of San Francisco. Then I was afterwards with the Stone & Webster people on the construction work on hydro-electric property in the Puget Sound district.

I graduated in 1906 from the Leland-Stanford, Jr., University, in California in electrical engineering. After graduation I was with the Portland Gas Company, of Portland, Oregon, for about two years and the last year was in charge of the distribution system and general construction. During the panic of 1907, construction work was so reduced that I left the Portland Gas Company, and later came with the Electric Bond & Share Company of New York, then in its in-

fancy. At that time we had about three small gas companies. During the time I was with the Electric Bond & Share Company, up in 1912, we had acquired gas properties all over the United States, from Washington to Alabama, and the last two years of my stay with them I was the Assistant Chief Engineer and in charge of the gas properties, that is the operation and construction and design of new work. For information I will just name a few of those properties, to give you an idea of what they were. They were gas plants at Anniston, Alabama, Raleigh, N. C., Durham, N. C., Walla-Walla, Washington, North Tacoma, Wash., Lewis, Idaho, and natural gas properties at Pittsburg, Kan., and Wichita, Kan. That is about all that come to my mind now, but there were others. In 1912 I left the Electric Bond & Share Company, which at that time had grown to be a very large corporation. We had in our engineering
366 department alone 385 men in our organization. I came in the organization in 1908, the 9th man in the entire organization. I left in 1913 to become examining engineer for Harris-Forbes & Company, and N. W. Harris, and Harris Trust & Savings Company, Chicago, for whom I examined and made valuations for them in the sum of about $196,000,000.00 worth of property. These properties were all kinds, including gas companies, hydro-electric companies, steam railroads, interurban railroads, telephone companies, and so forth. A number of gas companies I examined at that time in this section were at Greenville, S. C., and Charlotte, N. C., which was at the time I was making the report, but afterwards called the Southern Public Utilities Company. That was being done for the purpose of financing or rather for the proposed sale of bonds to Harris-Forbes, and their associates, which deal by the way didn't go through. During the time I was with the Electric Bond & Share Company, I made reports on gas companies at Huntsville, Alabama, and Gadsden, Alabama, for the purpose of purchase, and afterwards for the Portland Gas Company, which they now own, as well as a great number of other companies. In 1914 I joined the forces of Mr. Brinkerhoff's concern, and have been with him continuously since, and, as he has rather outlined the character of work there, I don't think it is necessary to repeat. I might mention we have done some little gas investigation work since I have been there. We are at the present time retained by some interests in New York to make a test of a special gas producer, which work will probably go on during the next six or eight months.

In 1914, while I was with Harris-Forbes & Company, I was asked to come down here, and collaborate with Mr. Brinkerhoff, and of course I prepared my own report at the time, and I made report upon
367 the Atlanta Gas Light Company, and I made a valuation in collaboration with Mr. Brinkerhoff. That was my first experience with the gas property here. I came again in July and August of this year, making a general survey of the property, especially to see where the expenditures for the last three years had gone, which I did in a hasty inspection, and then again we have come in connection with our appraisal work for Drexel & Company of Philadelphia, and in connection with the gas properties and

the outside properties at this time. That is the entire electric and gas properties. Our staff is now working on that work.

As to this property, the gas company property, and as to what I have done to check it or investigate and report, due to the necessity of obtaining a quick report, I went to Chicago, and looked over the work, which has been done by Mr. Luick, and Mr. Cavanaugh, in the preparation of the inventory. I went into their working sheets right thoroughly, and into their methods of collecting the inventory, to make myself sure that everything was satisfactory. After having done that, I was willing to accept their inventory as of January 1st, 1919, as being substantially correct, and with that as a basis, I prepared my own inventory as of September 30th, 1921.

As to what participation I have had with Mr. Brinkerhoff in arriving at the values, and how did that come about, I took charge, in order that we should not duplicate our work, of the valuation of the inventory, and Mr. Brinkerhoff confined himself to the determination of the working capital and the going-concern value. We discussed the working capital, methods of determining it, and also going-concern value, but I really had nothing to do with the preparation of that. My time since we were told to go ahead with this, has been confined to a valuation of the inventory to be brought up to a price as of September 30th, 1921.

As to the land value, Mr. Brinkerhoff has already ex-
368 plained to you on what basis that was accepted. As to the transmission and distribution system, Mr. Brinkerhoff explained briefly that we took inventory as prepared by Mr. Baer's office, as of January 1st, 1919, as being substantially correct as of that date. Then from the Company's records the number of feet of mains of different sizes, numbers of services by different sizes, numbers of meters, as of record of September 30th, and various items available from the Company's records and statistics, as worked down since January 1st, 1919, up to September 30th, 1921, have been added to the inventory of Mr. Baer as of January 1st, 1919, and that was done just like Mr. Brinkerhoff recited it here, and I agree with him in the results arrived at in that method as he and I collaborated in bringing about that result, and we agreed entirely on the results we obtained.

This reproduction cost less depreciation of $7,144,253, as of the 30th of September, 1921, is a fair valuation. The purpose of this valuation is for the bankers primarily, and there will be no distinction in the report I make to these bankers to invest their money on, and what I am delivering to the Commission now. This report will go along with the electric company report to the bankers, and there will be no change in the figures as to the gas. This valuation here represents mine and Mr. Brinkerhoff's opinion and judgment as to the real fair value of this property, taking everything into consideration my knowledge of it, my acquaintance with it and my experience and skill as men, who have been in this business.

I assisted materially different gas companies throughout the country in getting up financial statements for the purpose of securing loans.

I do not know of any banks or bankers in the United States, that makes a speciality of loaning money on gas properties alone, and I have no knowledge of any banks, that confine themselves
369 primarily to gas properties, as most banks that deal in public utility bonds don't specify any one public utility.

At this point Mr. Walter T. Colquitt, of counsel for respondent, read to the Commission certain parts of the report of Prof. Riggs, that were marked by him, and to which he desired to call the especial attention of the Commission.

370 W. R. COLLIER, a witness for respondent, testified in brief as follows:

I am General Sales Manager of the Georgia Railway & Power Company. I have three departments, that keep me posted on the character of service rendered the public. One is known as the Greater Service Department, and the other two are special organizations—one known as Complaint Department, and one as Meter Department.

The Greater Service Department is a department, that was organized about six or eight weeks ago, with the view of having representatives call on all the customers of the Company, and inquire of them how the service was, and whether there was anything that the Company could do to assist them in using the service to advantageous ways. So far the Greater Service Department has made 4,074 calls on customers, since September 15th, 1921, to October 29th, 1921. Of these calls, we had 224 customers who made complaint of their gas service. We had 643 customers, who asked us to adjust the burners in their apparatus, or clean their apparatus for them. Both of these complaints, that is the complaints covering trouble with the gas service, and trouble with the apparatus, were attended to promptly. In every case, where we call on a customer, we ask them if they are satisfied with the gas service being rendered, and 3,951 out of the 4,074 reported that they were perfectly satisfied. The remainder did not express themselves one way or the other, or else entered a complaint.

The complaints that were made were referred at once to what is known as the Service Department, and men were sent out and these matters corrected at once.

The majority of the complaints was trouble with the customer's apparatus, burners clogged, or rust in the pipes, or some apparatus needing adjustment. We have only found since September 15th, trouble with the Company's apparatus at one place, where we
371 found the mains on the street was too small, and they were taken out, and replaced with larger mains. The main was too small at that point because this happened to be a short street where some year or so ago there was one house built. This house made application for service, and a main of small diameter was run to this one house, we not expecting that particular street to build up. About four or five months ago, as well as I can find out, a man bought the property and developed it, and put five or six houses on it, and they were connected direct on this small main. The main

was too small to take care of that number of houses, and the pre
sure was low, and we corrected it.

I have been connected with the gas department five or six year
and am familiar with the character of the service.

The service at present in my opinion is better than it has eve
been during my connection with the Company. We are havin
fewer complaints than we have ever had, as far as I know. Nearl
all of the complaints are local complaints to the customer's premise
trouble with the customer's apparatus. He is responsible for thos
complaints himself, the customer is responsible entirely, but this
gratuitous work we are doing for the customer's convenience. It
his apparatus, and it is his responsibility for keeping it clean. Th
service is excellent at the present time.

Our meter re-readers, our men sent from the Meter Departmen
to re-read meters that we fear have not been read properly on fir
reading, are always required to ask the customer whether his ser
ice is good or bad. We received regular reports from these re-reade
each month, and we have been doing that since June. As to Jul
August, and September, we have reports. A re-reader, as we e
press it, is a man sent back to read the customer's meter before th
bill is ever rendered. When the original reader goes, an
372 his reading is entered on the ledger, we have someone in th
auditing department, who looks over the ledger, and, if th
bill seems excessively large or small, as compared to previou
months, the reading is thrown out as suspicious. We then send
man back to re-read it. This re-reader is supposed to ask the cu
tomer how his service is. That is done with the view of throwin
any light that may be possible on the use of the meter, and use o
gas at that place.

The 224 customers reporting trouble with their gas service, wer
really complaints of rusty pipes, or adjustments of apparatus. Th
Greater Service Department does not try to take care of bill com
plaints.

In June we re-read 701 meters. Out of this number we had 2
customers reporting they were having trouble with their apparatu
In July we re-read 498 meters, and had 9 service complaints. I
August we re-read 360 meters, and had 1 service complaint. I
September we re-read 351 meters, and had 3 service complaints. O
all the others the report was good service.

The majority of these complaints was trouble with the cloggin
of burners on the stoves or small water heaters owned by the cu
tomers, and the customer is responsible for keeping them clean
None of them were due to the apparatus or service of the Company
These complaints were then reported to the service department, an
men sent out immediately and proper cleaning or adjusting done o
the apparatus free of charge. All of this service was rendered b
the Company in order to better the service, and is not charged to th
customer, unless it is necessary to furnish material in order to repai
the customer's apparatus. All cleaning and adjusting is done free
All of this investigation is done free. It don't matter who sol

the customer this apparatus, whether some outside person
373 or whether we sold the apparatus; we render that service just the same. We don't differentiate. We keep a record of written complaints. Beginning in February, the written complaints were referred to the Sales Department, and I have a record of all written complaits since February 1st, 1921, up to date.

The letters received, that is the total number of letters received as shown on this list, cover not only complaints on gas service, but complaints on electric light and power service. I didn't divide these complaints on account of the fact that sometimes they complain on two services, that is electric light and power, as well as gas, but the total number of letters received in February was 261; March 124; in April it dropped to 61; in May it went to 202; in June 133; in July 69; in August 49; in September 54; and in October 68, and that is the total received on both gas and electric.

We have about 60,000 customers, gas and electricity, and these are all the letter complaints from all our customers. The majority of the complaints were complaints about bills.

All written complaints of all kinds come to my desk. They are included in this report. The written complaints in October, which numbered 68, I analyzed with the view to finding out how many of them referred to gas complaints. Out of 68 received in October, 45 covered gas complaints. In analyzing these 45, the majority of them were bill complaints, complaints on the size of the bill, and on investigating these complaints, we had tested 12 gas meters on request of the Company, and on these tests 8 tested slow, none tested fast, and 4 tested O. K. The total approximate number of our gas customers is about 32,000, and I received 45 gas complaints. Out of this we had 2 complaints covering gas leaks, and leaks on the customer's premises in their pipes. That is something they
374 are entirely responsible for, but we handle it just the same as we do adjustments.

I have the record of all the meters tested during 1921 on this sheet. The meters tested, prepay and regular, through September, totalled 24,813 meters. Out of this 24,813 meters, 17,208 tested absolutely correct; 4,821 tested slow; 1,810 tested fast; and 974 didn't register at all. They were non-register meters. The majority of those testing fast were found 3% fast. Plus or minus 3% we consider correct.

These non-register meters, mean that the customer received the gas, but it was not registered, because the diaphragm being cracked open, or the valves stuck, and simply allowing gas to go through without the meter registering at all. There were 974 of those, and we make a minimum charge in these cases, which is $1.00.

When this non-registering was discovered the bill was prorated back to the last reading period on the basis of the reading of the new meter installed, not over three months in any case.

We have in the past two years had a very heavy demand for gas. Last year of course there was an exceptionally heavy demand for gas connections. New connections are very heavy this year on account of the large number of residences being built all over town. We

have been on what we consider a building boom all this year, and the number of requests have been very heavy.

The higher rate we had did not seem to keep people from coming in and applying for gas. The new business department has had no trouble in selling the gas at even the higher rate we had.

The trouble has been to get the material to make connections,
375 and the money, and the main thing, that has held the new business department back from extending the business, is simply the inability to extend the mains to take care of the business.

376 PRESTON S. ARKWRIGHT, a witness for respondent, testified in brief as follows:

I am president of the Georgia Railway & Power Company, and Vice-President of the Atlanta Gas Light Company.

In Mr. Luick's valuation he gave no value for franchise. The exhibits attached to the answer, which I understand have been introduced in evidence—exhibit No. 1, is the exhibit, a part of the exhibit introduced by Mr. Luick, and shows the valuation as of September 30th, 1921, for the fixed physical property used in the gas business, both that owned by the Atlanta Gas Light Company and leased to the Georgia Railway & Power Company, and that owned directly by the Georgia Railway & Power Company.

Mr. Luick's exhibit of working capital amounts to $425,000.00. I would like to say with reference to working capital, that Mr. Rigg on page 15 of his report, or page 15 of this copy, reported that the working capital required by this Company was $414,000.00. Mr. Brinkerhoff testified that the working capital required by the Company was $418,000.00. In the Commission's minimum valuation, whatever may be said about it in their figures, it is perfectly apparent that the allowance made for the working capital of the gas business is not adequate. The gas business requires expensive materials to be kept constantly on hand. It consumes coal and oil in large amounts. In order that there may be no interruption in the service from strikes, car shortages, from inability to get needed supplies, or accidents, or contingencies that may happen, approximately sixty days' supply of coal and oil must be kept on hand, particularly during the winter months. There are also other supplies, that necessarily have to be kept on hand, such as fittings, and pipes, and various other things of that kind. That would
377 not be required in a telephone company. They don't consume any materials. A street railway company does not consume materials. A water-power electric company does not consume materials, although they have to keep various materials on hand, but they don't have to keep coal and oil consumed in the making of the product on hand. In addition to that, the gas company collects its bills after the service is rendered. A telephone company collects its bills in advance of rendering the service. The street railway company collects its money in cash as the service is rendered. The gas company collects its bills monthly. We cannot read the meters of 32,000 customers all in one day. They cannot be billed until their meters are read. We are reading meters all during the

month. So there is an average of 45 days after the service is rendered before we begin to get the money back. We therefore must have money invested in labor, material, and all of the other operating expenses entering into the manufacture and service of that gas, which the customer has received, which we have paid for, and which we have not got the money back for; so that, while ten per cent. might be somewhere approximately right, ten per cent. of the gross earnings to cover that part of the working capital, it overlooks, forgets, the stock of supplies of coal and oil on hand, which should be added to it, and the correction upon the Commission's figures applied to the gas company, and the figures testified to by these gentlemen, are simply an addition to approximately ten per cent. of the gross receipts, or as they express it, forty-five days' operating expenses, for the stocks of coal and oil and other supplies on hand. There cannot be any question that, taking the gas department separately, that is working capital actually required, as shown by our books, and a reasonable working capital necessary to be required.

Mr. Luick's valuation of the fixed physical property, and his
378 valuation of the going-concern value of $1,000,000, and his working capital of $425,000.00, and making the total value of the gas properties on the basis of his valuation, excluding from consideration for the moment the cost of financing, and any value for franchise, making the value thereof $7,525,750, I would like to say with reference to the franchise of the Atlanta Gas Light Company, that, in addition to being incorporated by its act of incorporation, that Act grants a special franchise. It grants to the Atlanta Gas Light Company the right to lay and maintain its pipes and works in the City of Atlanta, and perhaps other territory, and it has been held that it has the right to lay and maintain its pipes without procuring the consent of the municipality. That was held by the Supreme Court in an action against the City of Atlanta. That franchise was granted by a special Act of the legislature in 1856. You could not get one today, under the Constitution of the State. They cannot do it. It is perpetuity. It is a valuable franchise. About that time, or shortly before that, the State gave away land it owned in the northern part of the State of Georgia, charged nothing for it, gave it away. Because it gave it way is no reason why the owner of that land today is not entitled to the value of that land today. You may say they gave away a franchise in this instance. They did not, in the sense they gave away the land, because the man could take the land with no obligation to do anything, except to pay taxes on it, whereas, to take the franchise, we became obligated to spend money to use and develop the franchise. So there is a considerably greater consideration for the grant of the franchise to the Company, than there was for the grant of the land to the grantees; necessarily the franchise would grow in value from 1856 to this date, just like the land then given away by the State has likewise grown in value, or just like, if a person bought a piece of land from another private owner in 1856, located on White-
379 hall street for $1,200.00, that land would have grown in value today to something like $300,000, to $400,000. Under the

laws of Georgia that franchise is assignable, transferable, and it is protected by law against confiscation, or encroachment. It is taxable under the laws of Georgia, and in the law making it taxable it is declared to be property, and to be taxed as property on an ad valorem basis. It has all the attributes of property. It is assessed by the Comptroller General for taxation at $300,000.00. The Tax Commissioner of the State of Georgia directed the tax officers of the various counties of the State to bring up the assessments of real estate in those counties so that they would reach an average assessment of 35% of their saleable value. The real estate in the State of Georgia is not assessed for taxation at as much an average of 35% of its value.

In the City of Atlanta, real estate is assessed by the city tax assessors at approximately, supposed to be approximately, 66⅔ per cent. of its value, or thereabouts. An actual investigation will show that those assessments on real estate in the City of Atlanta will run around 50 per cent. of their value. They are then accepted by general agreement by the state and county tax receiver for taxation at 70 per cent. of the city assessment, which would run therefore from 35 to 45 per cent. of the sales value of Atlanta city real estate for State and County taxation. The burden of taxation is relative, and our property should be assessed for taxation in the same relative proportion as other properties. Comparing it with real estate, which is the property, that bears the largest part relatively of the tax burden in proportion to its value, would make the value of this franchise to justify a $300,000.00 assessment something in the neighborhood of $1,000,000.00.

380 The going-concern value included in Mr. Luick's valuation of a million dollars, testified to by Mr. Brinkerhoof as in his opinion being of the value of $700,000.00, and allowed in rate hearings by the Commission at ten per cent. of the value of the fixed physical property employed in the business, caused some question to be raised about this Company's being entitled to that going-concern value. There cannot be any doubt that it exists, and is of value, for the Company as a going-concern, with the business attached, has an element of value in addition to the fixed physical properties, or other tangible properties. It does not make any difference where the money came from to pay for it; the Company owns it; it is its property; it is devoted to the public service. Even if the cost of attaching the business had been charged to operating expenses, that does not mean that the customer paid it at all. In order that we should have gotten the money from the customer to pay for it, we would first have to get out of the business all of the costs of furnishing the service, including taxes, including funds sufficient to replace our property it became worn out in the service, and including a reasonable r n on the fair value of the property we devoted to the service. We are entitled as of right to get all of those items, and only when we have gotten more than that, have we gotten anything more than we might be strictly entitled to. So I say the fact that it may be charged into operating expenses does not

mean that the customer paid for it in addition to what he ought to have paid.

The Atlanta Gas Light Company's rate was made $1.00 in November 1884. That is the first rate in the whole Southeast as low as $1.00, and for years was the lowest rate in this territory. It was one of the earliest companies in the United States
381 to charge as low as $1.00 for artificial gas service. The service of the Atlanta Gas Light Company has been excellent. Since it started in 1856 to this date, there have been only two periods in its history, when its service was justly subject to any complaint, and both of them were due to war. One was in the 60's, when the town was destroyed, and there were no customers left to serve, and the service was interrupted for a period, and resumed as soon as the town needed service again, and the other case was during the world war, when everybody's service was interrupted, and when this company was unable to get the materials and money necessary to keep the service up to its standard. Those are the only two periods in its whole 65 years' history, when its service was justly subject to complaint. It had been considered a standard of excellence in gas service. The public receiving the service of the gas company never complained of the dollar rate. It remained a dollar until November 1st, 1918, from 1884. This Commission considered that rate on complaint in 1908, and approved it as a rate, which should not be reduced. The Mayor and Council of Atlanta itself entertained a complaint about that rate in 1914, and after investigation they decided that the rate was so reasonable they would not be justified in making a complaint to this Commission. So, therefore, there can be no question that the dollar rate maintained by this Company was a low rate for the service charged, for the service was most excellent.

There are no peculiar circumstances existing in Atlanta, which bring about a low cost of making or serving gas. Therefore I say that, if the Company gave excellent service at a low rate satisfactory to its customers, and it made a better business, the increased value of its business obtained is an asset which it is rightly entitled to, because, if the dollar rate did give the customer a service
382 with which he was abundantly satisfied, and which he was satisfied was worth the dollar, and if out of it we built up a business, which is of value, we certainly are entitled to it, and he, the customer, did not pay for it. There is another thing. For years we sold appliances at cost. We were entitled to a profit on them, and we are entitled to a profit on them, and it has got nothing to do with the rate for gas, really, but we forewent the profit on the appliances to get the business, and by pushing the sale of gas stoves, hot-water heaters, and other gas-consuming appliances, we have built up the gas business. Does not the resulting business belong to us? In addition to the attached business, or the cost of attaching the business, there are other items going into going-concern value, the perfecting of the organization, and the knowledge of local conditions. Why, after we have got the customer at-

tached, a competitor couldn't take him away on the same price, and the same service, because he is physically attached to the Company, and for another man to come in, he must dig up his land, go into his house, cut through his wall, and he won't stand it, to change simply from personal whim. So his attachment to this Company is a physical attachment, that keeps him tied to it, as long as our rates are as good and our service is as good as any competitor's would be. It is a more valuable going value than an ordinary business could possibly acquire.

The gross earnings of the gas department of this Company for twelve months on the basis of the earnings for June, July, August and September, 1921, if the gas sold during that four months period had been sold at the rate which was made applicable from June 1st. The minimum net rate was $1.65, made effective June 1st, 1931. A study of the Company's business through a
383 period of years will show the average rate received by the Company will be about 97% of its maximum net rate. Mr. Riggs made that study, and set out that chart in his report, and reference made to it, and he concluded that the average rate would be 97% of the maximum net rate or the net maximum rate. It has been explained that the reports which we make for the calender month, such as June, are not the earnings made during the calendar month, but they are during the meter-reading period, the last day of which meter-reading period falls in that month. Some of them will be customers for gas consumed between the 2nd of May, and the 2nd of June, and so on for various dates up to between the 25th day of May, and the 25th of June; so that the earnings, that we got in June, were not earned in June, and therefore a large portion of them would be at the old $1.90 rate. Therefore, to get the effect of this rate on earnings, it is necessary to apply the average, that will be received from the rate to the gas sold during the period, and from the figures filed month by month with the Commission, is made such an adjustment as is necessary to bring the gross earnings down to what they would have been at that 97% of the maximum net rate, making the rate $1.6003. Then that is multiplied by three, to get at what it would be for the year. Operating expenses, and taxes, depreciation at 2½% on Mr. Luick's valuation, deducting from it the cost for maintenance over the reserve, leaves net earnings of $292,136.02, which is a return on the valuation shown in Exhibit No. 3, which is Mr. Luick's valuation, excluding his value of the cost of financing, at the rate of 3.88 per cent per annum.

The actual receipts, expenses, taxes, and an allowance for depreciation on Mr. Luick's valuation, for the year ended September 30th, 1921, producing net earnings for that period shows that there is no adjustment in there. The actual figures are $217,065.49,
384 which would show a return on Mr. Luick's valuation at the rate of 2.88 per cent. per annum.

The construction expenditures of the gas department of the Company from January 1st, 1921, to August 31st, 1921, and in addition thereto the amount that will be expended during the remaining

four months of the year for work already authorized and in progress, shows amounts actually expended at August 31st, 1921, during the year of $248,217.27, and the amounts in process of being expended, which will be expended during the remaining four months of the year, $149,216.14, making total amounts expended for construction in the gas department for the year 1912, $397,433.41.

The work itself, on which the expenditure is being made will be in use at the end of the year. I think it ought to be considered in any valuation that might apply as a rule to these rates. You are determining rates not for the past, but for the future. You should at least consider what any rate you might have in mind would yield for a twelve-month period in the future. All of this property will be in use for nine months of that period, and most of it in use for all of that period, and some more property to be built after January 1st, 1922, will be in use for a part of that period. It is usual to take half way of the twelve month period as an average what will be spent by that time.

This Company contends that it is entitled to a fair return on the fair value of its property, but for purposes of your consideration in your own minds I want to give an illustration of the application of the existing rate to your minimum valuation. In this case, in this gas business before the Commission there have been a number of valuations by Mr. Forstall, by Mr. Baer, by Mr. Luick, and by Mr. Riggs, prior to this present hearing. The Commission never
385 fixed a value equal to as much as the value testified to by any one of those witnesses. In the war period the Commission fixed a measure for emergency rates, something, which, with everybody called on to make a sacrifice, might be considered a measure, beyond which we would not be called on to make a sacrifice during the period of the war. So they fixed a measure for consideration of emergency rates, which was not intended to be the full measure of what under ordinary circumstances the public utility company would be entitled to have. On that basis as of January 1st, 1918, the Commission valued the fixed physical property at a minimum valuation of $3,500,000.00. Adding to it the construction shown on our books accomplished in the years 1918, 1919, 1920, and the first eight months ending August 31st, 1921—and of course we would be entitled to it up to September 30th, but I couldn't prepare the figures—and adding to it the construction in progress to be completed during the remaining four months of 1921, and adding to it the value shown on the books of the company for the property in the Decatur district, which is $78,322.69, it would make a total minimum valuation of the fixed physical properties on the basis of $4,395,598.40. Adding to that the Commission's plan of going concern value, which is to say 10 per cent of that fixed physical property value, it would be $439,559.84, and I have added here $408,000.00 for working capital which is too low. The only change in this illustration, and what you yourselves fix, is the change in the working capital. That is all, and the correction in another figure, which takes a little off. It would make the total value of the property on that basis $5,166,158.24. Taking the same study of the earnings

for June, July, August, and September, and applying it to a year as we did in the other valuation, but taking the depreciation at 2½ per cent, off the Commission's fixed physical property valua-
386 tion, which by the way was an already depreciated value, and therefore is the wrong application of the depreciation percentage, but taking that application of it, and deducting from earnings expenditures for maintenance over and above reserve $12,000.00, it leaves net earnings for the year $357,530.70, which applied to this minimum valuation of the Commission would mean a return of 6.90 per cent per annum. That is based on the existing rate as being an average of 97 per cent of the maximum net rate applied to a year.

Mr. Riggs likewise set out what I considered he intended to be a comparable minimum valuation. He valued on that same basis the fixed physical properties of the gas department of this Company as of March 1st, 1921, depreciated $4,441,305.00. Adding to that the construction actually expended six months to August 31st, 1921, and likewise the construction in progress to be completed during the last four months of 1921 would make the total fixed physical properties depreciated $4,301,308.41. Adding to that for going concern value the Commission's measure of 10 per cent $480,130.84, and adding to that the cash working capital of $414,000.00 (Mr. Riggs working capital), it would make a minimum value comparable to the Commission's minimum value of $5,695,439.25, as contrasted with the Commission's minimum valuation of $5,166,158.00. Applying the earnings for the four months, as heretofore explained, and making the depreciation 2½ per cent of his fixed physical property which he says is a correct rate of depreciation under all the circumstances of this case (while some engineers put it as high as 4 or 5 per cent, considering maintenance, but considering this 2½ per cent as correct), it makes net earnings $324,586.00, which would yield a return on his valuation for the year of 6.6 per cent per annum. There are likewise given in Mr. Riggs' report various valuations. He gives Mr. Forstall's valuation of the fixed physical prop-
387 erties on one basis as of January 1st, 1921, $4,691,000.00, and on another basis as of the same date $5,551,728.00.

That valuation does not depend upon changing costs at all. The first one was based on $4.00 a thousand cubic feet sold as of 1912, adding to it the construction shown on the Company's books since that time. The second one is on the basis of $4.00 a thousand cubic feet of gas sold during 1920. It also gives Mr. Baer's 1912 pre-war valuation for the fixed physical properties of the Atlanta Gas Light Company alone depreciated, which would be as of January 1st, 1921, $4,062,000.00. To all of those valuations must be added working capital and going concern value without any allowance being made for the increased value of the fixed physical property brought about by general rise in exchange values or general rise in prices of all commodities, or the general reduction in the purchasing power of the dollar.

Mr. Riggs likewise reports the book value of the fixed physical properties of the Company, which he says as of December 31st

1920, was $4,513,396.00. That includes no working capital or any going concern value. So that a value arrived at on that basis should have added to it working capital and going concern value and in addition should have added to it some percentage to cover the increased cost of reproducing it now and therefore its increased value today. He likewise stated that "While I have seen no figure for the historical cost of the property, I am convinced it is not less than $4,701,500, as of January 1st, 1921," to which should be added to get at the value of the property the working capital and an allowance for going concern value, and in addition thereto some allowance to cover the increased cost or consequent increased comparative value of this property with all other property. What we have got invested in this business is property, just like a dry goods merchant, if he owns his store, has got his store invested in his dry goods business, which store today might be worth $200,000, but which he bought in 1870 for instance, for $35,000.00. In every trade or valuation that you can think of, outside of the public utility business, you know that the article is valued at present day prices, regardless of its cost. If you buy or sell real estate, improved or unimproved, you buy it or sell it at its present day value, regardless of what it cost. If you buy or sell shirts, or merchandise, or whatnot, you buy or sell them on their present day value, regardless of what they cost. The question of original cost in getting at the value of a public utility company is not to determine what the original cost was, but it is as a guide to determine what the present value is. For instance, if I own a house, that you want to buy from me, and I have just completed it, and the question became one of the value of the house on the lot, you would like to know what it cost me to build it, and it would approach very nearly what it was worth today. If I built the house twenty years ago, you would not buy it from me, nor would I sell it to you, on the basis of what it cost me. If you have got at original cost at all, you would get at it simply for the purpose of a guide to its present day value. For illustration, if I paid $30,000.00 to build a house in 1914, and the house was today as good as new, and you were willing to pay me what it was worth, and I was willing to sell it for what it was worth, and told you it cost me $30,000.00 in 1914, and we went out and found that it would cost 60 per cent more to produce that house today, you would pay me $30,000.00 plus 60 per cent more, making the price $48,000.00. That is what you would pay me for it, and that is what I would sell it to you for. So, when you get at pre-war values, book values, historical costs, you get at them as a guide to what the present day value is, and that is what we are entitled to a reasonable rate of return on, and any one of these values, that have been testified to throughout all of your investigation of the gas business of this Company, reduced to present day values, will come out just about what Mr. Luick testified they are worth today. Unless you are going to take present values, what possible justification have you for deducting anything for depreciation? If it has depreciated $600,000.00, it cost the Company that $600,000.00 to put it up but you take off the $600,000.00 to get at

its today value. That is the only reason you take it off. Now, if from some other circumstance it becomes worth $600,000.00 more than it cost, it cannot be possibly justified in not having that $600,000.00 added as an increase in its value to get at its today value.

The losses sustained by this Company in its gas department for the years 1917, 1918, 1919, and 1920 on the basis of the Commission's minimum value, allowing 8 per cent of that minimum value, taking the actual showing on the books, and allowing for working capital only the Commission's 10 per cent of the actual gross revenue for working capital, shows that in 1917 this Company failed to earn that 8 per cent by $189,000.00; in 1918 it failed to earn it by $269,671.60; in 1919 it failed to earn that 8 per cent by $138,618.38; in 1920 it failed to earn it by $428,202.13; or in the years the four years of 1917, 1918, 1919, and 1920, it suffered a loss in furnishing service on that measure of return of $1,025,514.28. In the year 1920 it earned nothing for a return but failed to earn the actual out-of-pocket cost, including an allowance for renewals, by $60,827.00. That loss was not voluntarily suffered by the company. That loss was not due to improper business methods. That loss was not traceable to a lack of demand for the product. That loss was not due to extravagance in operation. That loss was not due to any accidents or conflagrations or contingencies. That loss was due to the fact that we could not fix our own prices as other business
390 can and as business must. They must anticipate increased costs and make their prices rise quickly to changing conditions. If we had sat idly by, however, and made no effort to meet the situation, we would be chargeable with the loss, but we didn't do that. We were getting along very well in the first half of 1917. It was only in the last part of 1917 that the increased costs brought about by the war began to be felt. We had to suffer a loss before we could apply for relief. We did apply in due and proper season for relief, and we got a measure of relief, but not a sufficient one. We re-applied. We got another measure of relief, but not a sufficient one. We kept that up repeatedly at intervals. So it cannot be said that we were negligent in applying to the proper authorities for relief against the situation, or that we failed to anticipate that prices ought to be and must be adjusted to costs. We suffered that loss of $1,025,514.38. Customers of this Company benefited in money to just that same extent. They got gas service from us at that much less than they ought to have paid us for that service on the minimum basis. Those customers are substantially the customers now receiving service. Such losses have been treated by Commissions, or have been contended for to be treated, in two different ways. One is to capitalize it, and allow a reasonable rate of return on that through out all eternity almost, and another is to amortize those losses over a reasonable length of time. The most of the Commissions, who have passed on it, have decided the reasonable methods was to amortize them, so that the customers, who got the money benefit should pay it back. Therefore in making any rate the rate should yield not only a reasonable rate of return on the property devoted to the service, but in addition should yield some additional sum

which in the course of some reasonable length of time will pay back this loss. Mr. Riggs made a similar estimate, but he used a
391 different rate of return, and a little different depreciation, and under his calculation the total deficit was $972,804.00, reporting a deficit for each one of the years, and reporting that in 1920 we failed to earn an out-of-pocket loss of $57,494.00, without any reference to any return whatever. The Gas Company is operated and controlled by the Georgia Railway & Power Company. It of course should stand on its own bottom, but yet its rates and its earnings don't permit it to stand up by itself; it is held up by the Georgia Railway & Power Company. If it had been an independent company, it would be in the hands of a receiver, insolvent. It could not have withstood the loss. It could not have complied with the Commission's order to spend some $400,000.00 in new improvements to better its service. Its service would have been unfortunately worse than it was, and would have grown progressively worse and worse. It could not have been helped. It would have been absolutely without credit. It could not have borrowed a dollar because it could not even pay the interest on one dollar of debt, nor could it borrow any more. It had to draw its funds from the treasury of the Georgia Railway & Power Company to carry on its work with. The Georgia Railway & Power Company itself on all of its combined property, has not earned anything approaching a reasonable rate of return on the minimum value that this Commission has fixed on it, but it has supplied the money, improperly indeed, for the gas company, and has accumulated a large floating debt, crippled its own ability to go on with the other duties and services, which it has undertaken, and to that extent is placed in the position itself where it is on the verge of failing to provide the necessary electric service needed by the territory. We don't even earn, are never permitted to earn, an unusual profit. Why, we are called here today because for two months the statements apparently indicated that
392 during those two months, the gas department was earning a fraction over 8 per cent on the minimum value of its property, and the hearing is for the purpose of shaving off that fraction, which developed apparently for two months. What, therefore, is there to accumulate any surplus to cover the periods like these, when we suffer a loss? Does not law demand, or justice require, or does not selfish interest in the preservation of the gas service demand, that those losses should be made up? We will have a hard enough time carrying them for the four or five years until they can be made up without undue hardship to the customer of the Atlanta Gas Light Company.

The balance sheet of the Atlanta Gas Light Company does not cover working capital for the gas company or going concern value.

The gas sent out and the gas registered by meters in each month January to September of the year 1921 compared with the corresponding months of 1920 shows a little decrease in gas sold in 1921. The increased price of gas made effective March 1st, 1921, will disclose that the increase in price did not deter the purchase and use of gas.

There is a falling off due to a general condition affecting all business. The demand for gas is affected less than any other business. On that subject I have had people come to the office and ask for gas, who stated that the would pay the cost of extending the main to their premises and pay any price to get it. The principal issue in the annexation of Kirkwood to Atlanta was their belief that our franchise and charter, required us to furnish gas in the City of Atlanta, and, if they got into Atlanta, they would get gas. They told me that gas was essential, and that their property was of less corresponding value than the property similarly
393 situated around Atlanta, which had gas service. The existing price of gas and the $1.90 price for gas was within the price that the customers considered the gas service was worth to them. Another significant thing about these figures is that, while the ordinary loss in gas between that sent out and that registered by meters will run between 10 and 12 per cent, (this Commission allowed 10 per cent for it,) the month of April, 1921, showed more gas registered by meters than was sent out. The month of September 1921, showed more gas registered by customers' meters than was sent out; which again is explained by the fact that the gas registered by meters is for the meter reading period and not for the calendar month, and the gas sent out is for the calendar month.

The cost per thousand cubic feet, that is the operating cost alone without any allowance for depreciation or allowance for return or anything like that, in April fell to .9728 cents, whereas it was $1.20 in March and $1.12 in May.

In September, which is the only time it occurs, the cost fell in September to 98 cents, whereas in August it was $1.18. The explanation is apparent, because first your meter reading period was longer than your calendar month and for other reasons it also illustrates the fact that you cannot determine the proper rate by one month or a very short period.

The total expense per thousand cubic feet for gas sold for 1913 to 1920 both inclusive, divided into the items of manufacturing labor, material for manufacture with credit for residuals, distribution expense, commercial expense, salaries, general officers, other officers, new business, taxes and depreciation, and on those items the cost per thousand cubic feet in 1913 was .6779 cents; in 1914 .6429 cents; in 1915 .6109 cents; in 1916 .6408 cents; in 1917 .8676 cents; in 1918 .9470 cents; in 1919 .9621 cents; in 1920 $1.31; in January, 1921, $1.58; in February $1.37; in March $1.38; in April
394 $1.1358; in May $1.3113; in June $1.3825; in July $1.3361; in August $1.3860; for the eight months of 1921 it averaged $1.3627. In this connection I would like to refer to Mr. Luick's answer to a question I asked him. Mr. Luick's valuation of this property exclusive of the value of financing was $8,093,207.00. Eight per cent of that sum is $647,440.00. Estimating the sales this year at 1,350,000,000 cubic feet of gas, it would approximate $.48 per thousand cubic feet that we would have to get from the gas to pay 8 per cent return on Mr. Luick's full valuation. His depreciation was based upon $6,926,307.00 at 2 per cent. He took the

un-depreciated fixed physical property, on which to calculate his depreciation; otherwise we would never get back enough money to replace the property with, because it would be progressively decreasing, if you applied it to the depreciated value each year. It makes considered on his basis $138,526.00, which divided by this 1,350,000,000 cubic feet would make about a 10 cent charge to cover his depreciation. He stated upon the assumption of a cost of $1.15 per thousand that it would take about $1.75 per thousand to yield 8 per cent on his value, including his allowance for depreciation. The actual fact is that the cost is $1.15 or rather $1.18 without any allowance for taxes. The taxes are about 10 cents more. So taking $1.18 for operating cost, 10 cents for taxes, 10 cents for depreciation, plus 48 cents for his return on the investment, it makes a total selling price of $1.86, average selling price to yield all cost including 8 per cent on his value. He said $1.76 upon the assumption that it cost $1.16, which is does without taxes, but adding taxes it makes it 10 cents more.

As to a comparative statement of the wage scale paid for 1921 over 1913. Let me say these wages that we have some few ordinary negro laborers, common laborers. We have some negro workmen
395 working at the gas plant, that are not treated as common laborers. They charge these retorts, and do other semi-skilled work, not only skilled work, but it is skillful work. It is to some extent rather disagreeable and risky work. We don't treat them in the call of what I call common labor. We have some common labor in the street gangs, but most of the common labor employed by this company is on construction work and not in operating. The men employed in operating are nearly all white men, and where they are negroes, it requires skill and experience. There has been no reduction in the wages of that class of workmen. On the contrary, they have been increased. Their wages, while very much higher than they used to be, have never been and are not now as high as corresponding workmen in unregulated employment, that is the rate per hour. These men work faithfully for their company. They have stayed during the period, when they were in demand, and could have gotten more wages elsewhere. Their wages have not been reduced. Regardless of what our disposition might be about it, and their wages cannot be reduced prior to the expiration of their contracts, and if the business can afford to pay them a proper wage, that is to say the rate is sufficient to justify those men getting a proper wage, their wages will not be reduced. The only thing, that could bring about a reduction of their wages, would be the inability of the Company to pay them the wages they are now getting. Otherwise they would be richly entitled to receive them. The statement is made so often that wages have gone down. Wages have not gone down to the men, who run the gas business, and ought not to go down, and cannot go down. There appears too a statement of the wages paid in 1913 and maximum paid in 1920, and wages paid now in the building trades, and a comparison will show that those wages are higher than wages we have paid and higher than 1913, and prices will never get back to the 1913 basis.

Let me say about gas oil just for a moment that this Company could not make a contract with any large reliable company
396 for gas oil. It might have made a contract for a portion of its supply from brokers or small companies, but even so they wanted a very much higher price than the then prevailing spot market cash price for oil. Likewise, if the cost of oil, the selling price of oil, went up, we couldn't have gotten it from them, if they had contracted to furnish us, at less than they could sell it to somebody else for, nor could we get any redress, if they didn't do it. So we didn't make any contract for the furnishing of oil this year. Besides that we felt that we could buy spot, when oil was seeking a buyer, at a low price, knowing that when the supply ran short or the demand got greater, we would have to pay a higher price, but feeling that the average we would pay during 13 months would be less than we would have had to pay, if we had made a contract for 12 months in advance. That has resulted in our buying some oil at 5½ cents per gallon, which was an extremely low price, but if anbody attempted to fix the rates on gas upon that one purchase of oil, he is falling into a grave error. That was for only a limited quantity of oil, I think 200,000 gallons. Oil did get that low, but it has gone up, crude oil, gasoline, and gas oil today is quoted spot cash at 8 cents a gallon. I have these quotations for it. The quotations received here range from 7⅝ to 11⅞ cents per gallon, all f. o. b. Atlanta, that is taking their quotations, and adding freight.

As to the freight on gas coal, and gas oil in September, 1913, and September, 1921, the coal being from Harlan, Kentucky, to Atlanta, and the oil being from Texas to Atlanta, and Oklahoma to Atlanta. In 1913 the freight on coal was $1.50 a ton. In 1921, plus war tax, it is $2.63 a ton. The freight on oil from Texas to Atlanta in September, 1913, was 3 cents a gallon; in September, 1921, 4.51 cents a gallon. The freight on oil in September, 1913, from Oklahoma was 3¼ cents a gallon; in September, 1921, 5 cents a gallon.
397 A comparison of the freight charges with the cost of coal and oil delivered to the Company's station will disclose the fact that the freight alone on coal is more than we paid for the coal delivered prior to 1916; that is to say, the freight alone is more than the coal plus the freight used to be. Likewise the freight alone on oil is more than the oil used to cost us delivered, more than it cost us in 1915, delivered; that is to say, the freight alone is more than the oil and the freight was in 1915; which is only another illustration of the fact that costs will not get back to pre-war costs, wherever they go.

As to present prices of coal, I don't think it has changed much. We have a contract for coal. It is a little bit higher. The full amount is $5.63.

We spent in maintenance more than the reserve in the years 1917, 1918, 1919 and 1920, so that, if spending more than the reserve means we are doing an unusual amount of maintenance, and taking out deferred maintenance, then we have done it practically always. The cost of doing maintenance work is very much greater than it used to be, and the dollar won't go as far as it did, and it takes more

dollars to do it with, and that we have spent more than the reserve in 1917, 1918, 1919 and 1920, in the figures submitted to you for consideration. We have deducted from operating expenses the actual money we spent for maintenance over and above the reserve. So that, if there is any question about the proper charge, the public has gotten the benefit of it.

There seems to be some misunderstanding in the public mind about the by-products of the making of gas. Of course, we do make by-products in making gas, but every dollar, that we get for the by-products, is credited to the manufacturing cost of the gas, so that the company gets nothing of the residuals or by-products, but all
398 the benefit of everything from by-products, is given to the service, consequently to the customer. There is also a general impression that we make a great deal of money out of the sale of stoves and other appliances. We do make some money out of it. We used to conduct it at a loss, but we now make some money out of it, but every dollar made out of it is put in here as earnings, and the benefit of every cent of it given to the service, and to the customer, and rates are based considering that the earnings from appliances are earned from making gas; so that the only thing the Company gets to pay a return on its property it gets out of gas alone, and gives to the service every dollar, that it makes, or can make, out of residuals, or out of the sale of appliances or out of any other incidental business.

As to a comparison of the rates in the Southern cities, if you will let me—to compare a rate you have got to know conditions. Some gas companies are natural gas companies. Of course their rates are very low. Some gas is a by-product of coke making, being gas supplied by people who are making coke. Naturally the price of that gas is low to the gas distributing company. It is sold to the gas-distributing company at a low price, and necessarily its selling price is low. It cannot be properly compared with artificial gas. Likewise conditions in various cities may vary the cost of coal and oil, the miles of mains to population, the number of consumers to miles of main, the sale per consumer, the sales per mile of main, whether the property is owned and operated by a privately owned company, whose statements must reflect all of its costs, because all of its costs must be met out of revenue, or whether it be operated by a municipality, and its statements need not reflect all of its costs, because it does not have to meet all of its costs out of revenue. It may meet
399 a portion of its costs out of the general tax fund, and generally does. Also a company might be compelled to charge the rate by franchise or by contract, but because it charges that rate it does not necessarily mean that that is a proper rate. We charge five cents for a man to ride from College Park to Decatur, giving him a transfer, so that he can ride 18 miles for 5 cents. If you were living in Birmingham, or in any other place, and they were demanding that you carry a man 9 miles on the street railway str-ight run, and 19 miles on a transfer for 5 cents, and urged an argument in behalf of this contention, that the Georgia Railway & Power Company does it in Atlanta, and that therefore it ought to be done in Birming-

ham, it should be shown that we are doing it because we have got a so-called contract, which compels us to do it, which contract was fastened upon us as a permission to double-track the line we already had, and we yielded to the contract to get the double track, so as to satisfy ourselves for better service, but we do not agree that it is a proper fare, any more than if a company, that sold gas at a certain definite price, sought to make us sell it at such a price, without knowing the conditions. You have got to know the conditions affecting the sale of that gas, and whether that price includes a reasonable rate of return on the property in the business. That's what you have got to do.

I have here a statement of rates in affect September 1st, 1921, in Southern cities, in Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Georgia. There is also a summary of it. The total number of cities reported on is 91. Of these 8 are municipally owned; 10 are natural gas companies; six of these companies in these cities are in the hands of receivers; number of cities, to which privately owned companies furnish artificial gas, 73. Of such total number of
400 cities, the rates vary, some being higher than Atlanta, and other as low or lower. That includes only cities in Southern states with populations of 10,000 or more.

The service furnished by the gas company is good; it is excellent in the quality of gas, pressure, and other conditions of service, and in treatment accorded customers. It is better—I believe it is better—than any time I have been connected with the gas company, which has been since 1903. There are some little sections that need further work to be done to preserve the service, and we are doing it. In Ansley Park, for illustration, we are building an extra line out Boulevard and Piedmont avenue to feed back into the back end of Ansley Park. We are making some improvements for a section of Druid Hills, that needs improving. We have complied with the order of the Commission in full, and we went further. We did other things which they did not require us to do, which we thought were needed for the improvement of the service. The service has to be good. People cannot put up with bad gas service. They might put up with bad other kinds of service, but, when they want the gas, they have got to have it, when they want it, of the quality they want. It ought to be good. It is good. It ought to be constantly and continuously kept good. We ought to be beginning—we will soon have to begin—to build additional mains throughout the territory. We have got some places where you cannot increase the pressure any more, and we need the increased capacity in mains. I think there is a plan provided for it, and that something like a million dollars expenditure must be made to reinforce the supply of gas in the territory as the demand constantly increases. Service is more important than rates.

The gas service is worth the rate being charged for it, and more. Nobody has quit using it on account of the rate, we have insistent demands for gas service. The gas property is not extravagantly operated. It is not extravagantly built. It is operated
401 economically, and efficiently, and it has got an efficient plant

to do the business with, and it has got no excess of plant. All those things were verified by the report of Mr. Riggs, who made personal inspection and examination of it. Now, with good service, and efficiently operated Company, it ought, as a matter of right, to be permitted to earn a reasonable rate of return, and from a selfish interest by the people in the community, they ought to be willing for it to earn a reasonable rate of return on the fair value, in order to keep the service good, and constantly expand it.

Station A, the manufacturing plant, is valued at $135,000.00 and Station B, the holder property, at $50,000.00. That is $185,000.00 which makes an increase in the values of the land of $35,000.00 over what the two pieces were valued at in 1914. The gas company owns only two pieces of real estate, Station A, and Station B. Both pieces of real estate are in use by the Company, used in service, and there is not a wasted square foot of it, I don't believe, or an unnecessary square inch. The gas company also owns the land, and manufacturing plant, and all machinery, appliances, apparatus, and buildings, that pertain to the land. They have holders there too, and they have a storage holder station, which we call Station B, that has two gas holders on it, and then they have transmission and distribution systems, consisting of pipe, and valves, and governors, and what-not, over the streets of Atlanta, and nearby territory. They have service connections and meters. Then they have office furniture and fixtures.

The Georgia Railway & Power Company leased the property of the Atlanta Gas Light Company, as of January 1st, 1920. That contract was a contract of lease of the property and franchise of the Atlanta Gas Light Company to the Georgia Railway & Electric Com-
402 pany. It become effective the 1st of January, 1920. It runs for the unexpired term of the lease of the property of the Georgia Railway & Electric Company to the Georgia Railway & Power Company, which lease was itself for 99 years, from the 1st of January, 1912, so that the term of this lease of the Atlanta Gas Light Company would approximate 91 years. The lessee is to operate the property, keep it in good condition, keep it extended abreast with the demands of the public, to meet the demands of the public. It is to turn the property back plus all additions to the gas company at the end of the lease, or in default under the lease, the gas company is to pay the lessee for any improvements or betterments it makes to the property, and give it bonds, from time to time, during the progress of the lease, which it agrees to take at par, it itself paying whatever discount may be necessary to raise the money for those bonds. The Georgia Railway & Electric Company owns all of the capital stock of the Atlanta Gas Light Company, and in the original lease of the property of the Georgia Railway & Electric Company to the Georgia Railway & Power Company, it was provided that any future acquired property subsequently acquired by the Georgia Railway & Electric Company, the lessor, would pass under this lease to the Georgia Railway & Power Company, lessee of all of its property, so that the lease to the Georgia Railway & Electric Company, makes likewise the Georgia Railway & Power Company a party to it, for the purpose of

purchasing the leasehold interest created in the electric company, which would pass to the power company, as lessee under the lease of the Georgia Railway & Electric Company. The rental to be paid by the lessee of the property, is interest, and sinking fund for the then outstanding bonds of the Atlanta Gas Light Company. The Outstanding bonds were $1,150,000.00, par value, 5% first Mortgage bonds, of the Atlanta Gas Light Company. The annual set-
403 ting apart for the sinking fund was either $6.66 or $8.88, per bond for each one thousand dollar bond. The bonds run, I think, fifty years, up to 1947, fifty years from June 1st, 1897. The money is to be invested in the bonds to be issued, provided they can be bought. I think they have no call for it, although I don't know about that. Unless they can be bought at a price at a stated rate of interest, then the money in the sinking fund is to be invested in certain other approved securities.

Of course, the lessee is also to preserve the property, run it, and operate it, and the lessee is likewise to remain the owner of the entire capital stock of the Atlanta Gas Light Company, the lease being united with the stock ownership, so he (the lessee) must remain the owner of the stock, or, if he parts with the stock, the lease becomes void. Therefore, he pays as rent no sum as a dividend on the stock.

When the sinking fund then does retire the bonds at the end of fifty years, or thereabouts, there will be no payment on account of rental charge after that time, not as interest on the $1,150,000.00 of bonds, those particular bonds, there would not be. There is a provision for the creation of another mortgage, not to exceed $5,000,000.00, and the lessee is to pay all interest and sinking fund on that mortgage, and he may, if the $1,150,000.00 of bonds are retired through the sinking fund, he may get out of the liquidation of these bonds, the bonds under this new mortgage, the proceeds of them, however, to be devoted to new construction of the gas property. The assets of the gas company were not listed at that time. They were valued in 1914 at the same time the other property of the Georgia Railway & Electric Company was appraised; at the time the power company took over the electric company. I think the physical prop-
404 erty is a little around $4,000,000.00. In 1912 the property was valued in 1914 as of 1912, and the fixed physical property alone depreciated of the Atlanta Gas Light Company, as of March 1st, 1912, was valued in 1914, at $3,174,665 in round numbers $3,200,000.00; that is without any working capital, going-concern value, or allowance of return.

As to these five million dollars of bonds, $650,000.00 of them have been issued, subsequent to the lease. The property of the gas company is specifically devoted to their security.

I am reasonably but not particularly familiar with the different plants over the country making gas. There have been reductions in the prices charged for gas throughout the country in the last twelve months. In the city of Richmond, that plant has been reducing. I think it is $1.30, though the statement has been made that it is reduced to $1.20. I think it is still $1.30. The price in Jacksonville is $1.75. In Savannah it is $1.60. In Birmingham it is .85 cents.

That is by-produce gas, produced from coke. I might state too that the company is in the hands of a receiver. My explanation of that low rate is this: it is by-produce gas, purchased from the company, whose chief business is making coke. It is called coke-oven gas. That gas is sold to the local distributing company at 16½ cents per 1,000 cubic feet, and they sell it at .85 cents. This 16½ cents would compare to $1.18 that it costs us, not that exactly, but the cost of manufacturing gas and of distributing gas. Where those plants have an iron industry, they have coke gas. Where they have the use of coke in fuel, they can make it.

People, that work exclusively for the gas company, have their salaries charged exclusively to the gas company. People in the company, who do work for all departments of the company, have their salaries distributed to the various general departments of the company, that is some of them do, and some of them don't. In
405 the general expense of the gas company, there are salaries of $200.00 a month for Mr. Atkinson, $416.67 per month for myself, $200.00 a month for Mr. G. W. Brine, $100.00 a month for Mr. Harry Flynn, Auditor, $175.00 a month for Mr. I. S. Mitchell, Jr., Treasurer, and $125.00 per month for Mr. Trazzare, in charge of publicity and employees' relationships, and $600.00 a month for the manager. $1,016.67 general salaries, are charged to the gas company. That corresponds to the item of general officers. The other expense takes up salaries and wages particularly devoted to gas service. That salary up there (on the chart) includes all general officers, whether proportioned or totaled. Belief becomes current that extraordinary salaries are paid, and that that therefore fixes the rate. The salaries are not extraordinary. The salaries are low. My recollection is that the total general salaries are something less than 2 cents a thousand cubic feet. It shows on the chart so that, if you discard all of them, and said, "let the general officers, all the general officers, work for nothing," it would affect the gas rate not at all.

Replacement is an allowance to take care of an ultimate renewal of property over and above the amount spent on maintenance. It is a depreciation allowance to off-set the depreciation, which is going on over and above the repairs, that you make on the property, so that, when ultimately you have to replace the property, you will have the fund to do it with.

As to whether there has been any change in the amount set apart for replacement, any substantial change, during the lifetime of that chart; that chart is based not on allowance made on our books. Up to a few years ago, we made no allowances on our books for that. I don't know what was the first year, but I think it was 1917, or 1918—I am not sure. It may be 1918. Prior to that time we made no allowance at all. The allowance on our books for replacement for the time it has been allowed, is greater than the allowance
406 shown on that chart. The allowance for replacement on that chart, *are* based on the Commission's minimum valuation of the depreciated physical property of the Company, and that valuation beginning in 1918 built up by the additions that have been made to the property, since that time, and the same percentage cal-

culated on that total depreciated minimum Commission value o the fixed physical property at the Commission's rate. We have a allowance on our books for more than that. There won't anythin last forever, at least it is not good business to count on anythin lasting forever. Then in addition to what you might call physica decay of the property, the wearing out of it, replacements may b brought about by the growth of the business, by the present propert becoming inadequate in the then condition of the company's busi ness. The day will probably be reached when we will have to dis card our entire manufacturing plant, land and all, and everythin on it, structures and machinery of every kind, and it is not fa away. Besides that, there come improvements and various othe things, that might make the bulk of the property obsolescent in th manufacture and supply of gas. So you could not say that any thing would never need replacing. In fact everything will surely some day need replacement. This item of replacement does not cove improvements. It is to keep intact the property that you have a ready bought and got.

The bonded debt of the gas company then is $1,800,000.00.

The stock is $600,000.00 preferred; $1,614,600.00 of stock, pa value. The total bond and stock account would be approximately three million, $3,200,000.00.

As to whether it has been said by many that they are fearful o attacking the power company, and that although they are dissatis fied with the rates, they are receiving, and dissatisfied with the service; a great many have said to me that the power com
407 pany has everybody spotted, who makes any adverse attack at all against the power Company. There is not the slightes possible foundation for it.

As to your having a letter quoting oil at 3 cents a gallon, in Dallas Texas, with a 4½ cent freight rate added to the 3 cents, it would be 7½ cents. I said 8 cents delivered in Atlanta, and I said the quotations varied from 7½ to 11½ cents, but that would be with freight added, f. o. b. station, which would be on that basis about 3 cents at the station, that is if the freight rates are correct. They could be checked, I suppose. The figure I have on the value of the land owned by the gas company is $185,000.00. That is the ap praisement by Mr. Adair. There are buildings all over it, over one piece of it, and other structures.

As to the question of taxes, the property of the Atlanta Gas Light Company includes elements which are not taxable. For instance the working capital included in here does not belong to the Atlanta Gas Light Company, but belongs to the Georgia Railway & Power Company. You would not expect to see it reflected in its taxes. The going-concern value is not an element as yet made taxable under the laws of Georgia; just like the circulation lists of news papers, while of great value, do not appear on tax books. Likewise the cost of financing, that is included in that, is not an element as yet made taxable under the laws of Georgia. The laws of Georgia, as applied to your household goods, for illustration, say that you must itemize them, and return that sofa, or that chair, at what you could

ell that sofa or that chair for. Now you might have paid $100.00
or the sofa, but you couldn't sell it for more than $20.00, and you
ould return it for taxation at about $20.00, or half of that, whereas
t is worth the $100.00 to you, and, if it burned up, you would
buy another sofa, and pay $100.00 for it, and this new sofa,
08 you would return for taxation probably at $20.00, or half
of it. The same identical thing applies to the Atlanta Gas
ight Company. We are required to separate the franchise from the
hysical property, and return it separately and value it separately,
s if they were not united. Then the physical property is itemized,
nd each item has to be valued, like your sofa, not at what it cost,
was worth in this business, not what it would cost to replace it,
at what we could sell the item for, and the same identical laws,
iat would apply to you in your optical business, or to you in your
ome, would apply in the valuation of our property. Our property
returned at a higher proportion of its value than any other class
property I know of in the State of Georgia.
I said they lost $60,000.00 in 1920, over and above operating costs
lowances. In addition to the loss of the return on the value of its
roperty. In other words, they lacked so much of making a fair
turn on their property, not only by $60,000.00; they lost $60,-
0.00 over and above operating expenses, taxes, and an allowance
r return on the property. In addition to that they lost all return
the value of their property.
The lease contract states that an inventory was taken of the prop-
y on the date the lease took effect, the date of the lease is January
, 1920. We did have an inventory made as of 1st of January,
19, which would be for all practical purposes sufficient for that
se—an inventory and appraisal. We did not have any additional
e made. We didn't make another one, because we had just had that
e made. The contracting parties used that in making this lease.
is inventory answers for the one mentioned in that contract, plus
at the books showed from January 1st, 1919, to January 1st, 1920,
preceding that there was one made in 1914. This inventory
) you have reference to is where it states "The lessor and lessee
mutually covenant that there shall be made as of the date,
en this lease takes effect, a full and complete inventory," etc. etc.
e was in progress at the time, and it was completed as of January
, 1919, which gave us a full detailed inventory as of that date.
at was accepted in lieu of that inventory, because we could add
it what was acquired during the year 1919, and we accepted that
the inventory referred to.

) HENRY M. BRINKERHOFF, was recalled by respondent.

The Chairman asked me yesterday about the data I said I could
up for him. I have gotten up that data about those 1914
ires.
You asked me, Mr. Commissioner, about the 1914 valuation.
is is it. This is the appraisal I testified about yesterday when I
engaged in 1914, that appraisal and report was for certain
kers, who were considering financial arrangements, and made by

me to them on their employment. I would like to explain just ho far that is true. The reproduction cost now is as of that report, physical condition of 89.2 per cent, and the reproduction cost le depreciation. Down to that point it is exactly from that report. Th working capital and going-concern values we have here are the one I referred to yesterday, as having been determined through an ex amination of the books for 1914, in order to check up with the presen determination.

As to what relation has the fair value for 1921, which I gave $7,144,253 to the fair value that I appraised it at in 1914, on th t-en-existing property; the relation between those two fair values a that the present value is 70% greater than the 1914 values, that i the 1921 is 70% increase over the 1914 values. That is made up o items of increase in physical and increase in intangible value. Th physical items are increased 73% and the intangible items are in creased 54%. In 1921 there are at present 32,423 customers. 1914 there were 23,704. That is about 36½% increase. The outp of gas in cubic feet for 1914 was 905,900,000. In 1921 we have t figures for the first 9 months, and I estimate for the next 9 mont to give the calculation, and it appears that it will be abo
411 1,522,000,000. That percentage is *is* an increase of abo 68% for 1921, over 1914. That was manufactured gas, b cause I didn't find the meter gas for 1914, when I was looking u these figures. The manufacturing plant for the production of g is approximately double.

We made that appraisal for the city of Detroit for a proposed pu chase by the city of the Detroit United Railway Street Lines, and th total, which was submitted to the voters in a referendum vote, a which I prepared for the city, was $31,500,000.00, and of that th physical value of the property depreciated was in round figures $28 000,000.00, the balance being going-value and these various thing that are termed intangible; working capital—there was some sma amount of working capital, but not much. I used the same metho of arriving at that that I used here. We had quite a large staff the ourselves. I represented the Street Railway Commission, and th men. We were the engineering firm employed by the city. Th company used their own engineers. The company had an engine and the city had an engineer, and there were two firms of accountant who collaborated with us in auditing the company's accounts. O method is very generally used.

As to Massachusetts. They have a system in Massachusetts, b which those public utility companies have been financed for a gre many years, allowing them to expend money under the direct supe vision of the Commission, and these matters of the values of th property, have been carried along under the Commission's supe vision for a great many years. So it is really there a built-u process, in which the commission have had their part, for a lon number of years. In a sense they use the method of money actual invested in Massachusetts, as the method of arriving at the valu tion. In a sense that would be true. In a sense that has regulate the issuance of securities, and expenditures of money, und

the Commission's approval, practically since the inception of a great many of those companies. The Interstate Commission have been valuing them by pricing the inventory of the property. There has been a good deal of contention as to whether they should admit the appreciation of those rights-of-way. The different railroads and the Commission have been in litigation of that question a number of times.

The reports of the Commission would show it. I don't know that I have seen that. I have those annotated reports—I try to keep up with them—but I don't recollect the latest decision of the Commission on that particular point.

As to my valuation of this property, I made it within the last two months. What we did was to make an inventory in 1914, and price it as of the then-existing prices. We now take that inventory of the property, as of today, and price it as of the present prices. In most cases the inventory being larger, and in some cases some of the property being retired, but we appraised the present system as in this, to get these figures. I don't think I could give you off hand the approximate amount of new property, that has been added since 1914, as compared to the present time. I should say in the neighborhood of somewhat under a million dollars, three-quarters of a million dollars, in that class of figures. The land is the same, I think it is. They have the same number of holders now. As to where would be the addition in this amount, they have extended their mains; they have extended their water-gas plant; they have added to the equipment in their coal-gas plant, that is, they put in new equipment, rebuilt portions of it, and so on. There have been changes and adaptations.

As to how much working capital I figure they require at the present time, $418,000.00. That is needed because in an examination of the books for the past twelve months, I went through it account by account, and ascertained that the store-house account, which carried all the gas supplies, at the end of each month averaged, trusting to my memory, about $182,000.00. That is a current balance, that is carried right through the year on an average. To that I have added the gas manufactured, and delivered to the customers, and not paid for, which is carried in a current account, and the bank balance, which they need for paying bills. It figures out, as I say, $418,000.00. It was taken from the books.

H. M. ATKINSON, a witness for respondent, testified in brief as follows:

I am the Chairman of the Board of this Georgia Railway & Power Company, also a director in the gas company.

I have prepared some notes, which I would like to refer to as I testify. The substance of the notes is in my mind, but by reference to the notes, I can testify more consecutively and probably in a shorter time than otherwise. So, if you have no objection I will refer to these as I go along. A vital feature of these properties, including the gas property, is the creation, construction, of them, and their continued development in the public interest. I am going to testify

today, or try to, as to what that has required in the past, and wh
it will require in the future, to carry out the plans, which should
carried out to properly serve the public, including the gas properti
A body as a whole cannot function, if any of its organs are disease
Neither can this enterprise grow and serve the public as it shou
if any one of its departments is sick and impoverished. That is w
I am going to treat the company as an enterprise as a whole, co
prising different departments, because it will succeed or fail as
whole. It cannot succeed as a whole if its gas department is a failu
The original plan of this enterprise was formed in 1889, or about th
year. The original plan has never been abandoned or changed, a
has been pushed with energy ever since. The original plan in its i
ception comprised only an electric light and power plant. Since it h
ramified to street railroad transportation, gas, and hydro-electric d
velopments. The result of the original plan is the enterprise tod
named or called the Georgia Railway & Power Company. The bu
ness policy of the company from that date, over thirty years ago, up
the present time has been to serve its customers well at the lo
415 est possible cost. It is necessary to satisfy the customers. A
business policy a product cannot be sold permanently at mo
than the customers think it is worth. Up to the year 1918, from the b
ginning of the original company, every change in rates in every d
partment has been a voluntary decrease until the rates in all depa
ments were practically as low as any in the United States. This Co
mission itself had an investigation and comparison made of the el
tric Light and Power rates during our first application for an increa
in rates in the year 1918. The result of that investigation was print
in its opinion of April, 1918. That investigation showed—and it w
done under the direction of this Commission—that there were on
two points in the United States, two cities, that had a lower rate. A
matter of fact only one of the rates was really lower, the other
the two mentioned being practically the same, average rate, as we we
getting at that time in Atlanta. Sometime ago I had a calculati
a statement, worked up for my own information. I didn't expect
use it at a rate hearing. It was the kind of statement that has to
made up as a guide to conducting the business. It was made for m
for that purpose. It was worked up to show the revenue per kilowa
hour, which is the electrical unit we furnish, from our total produ
during the year 1920, which was generated and purchased, deliver
at the principal sub-station, which we use for delivery to the City
Atlanta, as delivered to our other customers outside of what we c
the seven mile zone, and that statement; which I hold in my han
shows that the Company for the year ending December 31st, 192
received a revenue per kilowatt-hour for current generated and pu
chased of in round numbers 9½ mills.

As Chairman of the Finance Committee I have had the financi
of all these properties immediately in hand. There is very lit
about rates in what I am going to say. I was merely leadi
416 up. I had finished with the statement about the electric
rates, and there was a purpose in that statement. I was goi
to say next that the rate had been $1.00 for gas up to, I thi

November 1st, 1918; the street railway rate had been 5 cents with universal transfers up to the same date; that the rates had been as a whole very low; the service had been excellent; and that leads up to the statement, that I was going on with, bearing on the financing of the whole company, and now the gas company has affected that, and does affect it directly. It is almost impossible to separate in a general statement that company and its finances, and its inability to finance future extensions and developments of any branch of the property. It is almost impossible to consider one department by itself. For instance, this Commission could readily, easily, take action on the gas rates, that would destroy inability to finance, not only the gas, but any other department of the Company. It is so dove-tailed together in the departments, so interdependent, that you cannot consider one branch of the business without considering the effect on all the other branches. You cannot treat one branch separately from the other branches. They are one body, made up of different organs. That is the reason I stated one diseased organ infects the whole body. The question is so important, the treatment of it, that I was going into, is so vital to the future of this city and State, that I believe what I intended to say should be considered not only as related to this particular question before us, but as bearing on the whole enterprise. The gas department cannot travel by itself. It would not travel. It would not be functioning today in my opinion, properly, if it had been separate. Supposing I go on and pick out. I had prepared what I was going to say with a good deal of work, and a good deal of thought, and it has continuity. My only reason for mentioning that was to show the low level of rates of the company throughout its history. It was not intended as a discussion of rates, but as a statement of fact as to rates in all departments.

Local capital necessary to support the enterprise, including the gas department, has never been available, and is not available today. It would not have been possible to carry out the plans of the Company up to the present time without the constant backing of outside capital. That applies equally to the gas department, and to all other departments. From my knowledge of the affairs of the Company, beginning back to its beginning up to the present time, and looking at it as a whole, I doubt if there has been any period in its history, when it has earned a reasonable return on the fair value of the property, devoted to the public service. The only period, when that was possibly true, so far as my knowledge goes, was the period from 1902 to 1911, when owing to the rapid growth of the city, and the impetus given to the enterprise from the fact that all the companies were consolidated into one, gas, street railroad, electric light, and power, it had a prosperous period. I believe that is the only time in the history of the enterprise, when it did earn anything approaching a reasonable return on the fair value of the property, devoted to the public use. I don't know what returns it earned then, because we had no inventory, and appraisal of the property. I want to introduce in my testimony a statement, which has been made up, which is headed "Gross Operating Revenue, Operating Expenses,

Net Income, etc.," for the years 1917, 1918, 1919 and 1920, of all of the departments of the Company." (The statement referred to was filed with the Commission.) This statement shows the combined gross revenue for each of those years, the combined operating expenses, the combined taxes, the combined depreciation, and what it would have required to earn eight per cent on the values
418 named by the Railroad Commission, and adjusted with additions for each of those years. The accumulated deficit for the four years of 1917 to 1920 on that basis was $3,751,476.44. This statement begins with the year 1917, because the great increase in prices and costs of the service began in the latter part of the year 1917; also for the reason that the rates prior to the year 1918 were inaugurated by the Company with the approval of this Commission, and losses under those rates inaugurated by the Company voluntarily, with the approval of this Commission, have not been included in the statement for that reason. Of this $3,751,476.00, accumulated loss, during the four years 1917 to 1920, testimony has been presented here to show that the loss in the gas department during the same period was over a million dollars. The fair value of the gas property, as testified to by Mr. Luick, and Mr. Brinkerhoff, between whom there is no substantial difference, is about one-eighth, approximately—I mean one-tenth—in round figures, of the aggregate fair value of the property. The loss in the gas department of over a million dollars, is over twenty-five per cent of the accumulated loss during these four years, showing that the gas department has been carrying by the other departments of the Company, and that the service in the other departments has suffered from that fact, and further that, as a result of the four years stated, in which this loss was incurred, a floating debt of the Company of approximately four and a half millions of dollars was accumulated. The statement further shows that, if we had been permitted to charge rates, that would have yielded the eight per cent, which this Commission has determined is the fair rate on even the minimum value, as fixed by this Commission, we would be practically out of debt today, nearly out of debt, and would have reserve strength to go forward to develop the service in all departments of the company, and meet
419 the demand of the public for that service, when as a result of these inadequate rates, not only the gas department is crippled, but every other department of the Company.

In the records I am reading from I speak of a loss of $3,000,000.00. I am referring to the power company. I stated all departments. That problem, which I have presented to you in this statement—and it is just as direct a problem relating to the gas as it is to the whole company—must be solved rightly and justly. The right solution of this particular problem is in my judgment the most important question which the country faces today. It is the same question, which the country faces, and which it must solve in connection with the steam railroads. The results of it are country-wide, and may be summarized as three in number; arrested growth, which is true right here in Atlanta; disclocation of industry, through unbalanced prices; unbalanced costs of the service

on one hand, out of balance with the rates on the other; general unemployment. Understanding that these present conditions are the crying need in all factors engaged in business, not this business alone, but all business, the people must finally recognize, when they urge lower rates, what the effect will be on the utilities, and in that use of the word "utilities" I include the steam railroads. If they improverish utilities, what is the effect on themselves and business generally? This Company, with its gas department, is only one item in the condition, that is general. This Company throughout the period of the war, and indeed since it was organized, has devoted all of its resources to furnishing service. It has put all of its earnings, that it has earned since the day it was organized, back into the service, which it has furnished the public; but that is not all; after doing that it has accumulated a floating indebtedness of ap-
420 proximately $5,000,000, and a big part of that on account of the gas department, in order to continue to be able to furnish the service, which the public demand. It cannot travel on that basis any longer. It cannot borrow any more money on short-time loans. It cannot go on unless relief in the shape of adequate rates is granted. The Tugaloo development, which is half completed, is not completed because the company has lost over a million dollars in furnishing gas. The answer to that fact that that development, water-power development, is not completed, is inadequate rates, which have improverished and weakened the whole structure financially of the Company. We are now in a position where a continuance of the present d-ought means a break-down of electric power service. A break-down in electric power service will be due directly as one of the causes to the loss in the gas department. If the gas department had been operated on its own independent bottom as a separate corporation, it would today be in the hands of receivers. It has been supported by the other departments of the company, by the company as a whole, and has prevented the consummation of the plans of the Company in the other departments. I don't want to be understood as complaining about these conditions. That is not in mu mind at all. A good deal of this trouble is due to the owners and managers of public utilities. They committed the original errors, and to a large extent are responsible for present conditions. The whole theory of gas rates is wrong. It is impossible to serve a gas customer located within, say, one-half or one-quarter of a mile of Five Points at the same rates that it is possible to serve a customer in Inman Park, or Druid Hills, or North Atlanta. The rate fabric of gas rates is wrong. It was wrong originally. It is unsound and unbusiness-like, but that was not done by commissions. It was done by the men, who orig-
421 inally built the gas properties, but the trouble is that it crystalized the minds of the public on the dollar gas rate. The railroad Commissions found that condition, when they were formed. They inherited that condition, and they have ever since been trying and doing their best in their judgment to compromise crystallization of public sentiment on the dollar gas rate with what they knew in their hearts is just and right to the companies

under the law. I recognize the difficulties, under which they have labored. As one of the Managers and owners of public utilities, I am perfectly willing to come here and acknowledge the error, and ask for a fresh start on right lines, because it is business, and I am speaking of it as a whole, and this business will not travel further under the conditions of the past four years. It is very easy to crystalize the minds of the public on the dollar rate for gas, or the 5 cent street car fare. It is almost impossible to get that crystalization of an idea out of their minds, but that is the reason that has got to be taught. They have got to understand too, if these properties are to go on and be developed, and furnish the service, which the public needs and demands, that adequate rates must be granted. It is easy to get your minds crystalized on values, pre-war values. It is hard to realize, just as hard as it has been for me in the last six months, the changing conditions as they go on, the rapid change in conditions. You crystalize your minds on pre-war values, and it takes months, it takes years, probably, to change the public attitude to those ideas, but they must be changed, if this business is to succeed. We have been engaged in the last four years in trying to make forty cents, fifty cents and sixty cents, equal one hundred cents, and it cannot be done. We might as well acknowledge the error, and try to start fresh, or take a fresh start. The service of these utilities, gas and electric light and power, is essential to the existence of a city, even to human life. I want to give a few figures,
422 showing the growth of gas out-put since 1904. The cubic feet of gas sold in 1904 was 440,000,000 cubic feet in round numbers. In 1920 the cubic feet sold was 1,387,932,000. The kilowatt-hour out-put of the Company in electricity in 1908 was round 11,000,000 kilowatt-hours; in 1920 it was 293,721,000 kilowatt-hours, or thirty times. One of these things is just as necessary to the public as the other. You cannot separate the service. You cannot divide the functions of a body. During the war big prices for coal, and difficulty of delivery of getting delivery, caused the public to use extensively gas to heat their houses at $1.00 per thousand cubic feet up to October 1st, 1918, and $1.15 per thousand cubic feet after that time, and up to October 1st, 1920. During the greater part of this crisis, this world-upheaval, with its tremendous rise in cost and prices, the Company received practically no increase, very little, in the price received for gas. Realizing the absolute necessity of continuity of gas service, the Company has gone on during the past four years in spite of these conditions, and relying on the ultimate justice, when the public understands. Large amounts of new capital are constantly necessary to supply the demand of the public for the service. That is illustrated by the fact that in the year 1920 and the year 1921, we will have spent in round numbers under the orders of the Commission in round figures $600,000.00 in improving, which the Company did not have, and which it had to borrow. As I have stated, the capital needed to carry on and develop the gas department of the Company, as well, as the other departments, is not available locally, and I have made regularly throughout the history of the Company efforts to raise

money locally in Atlanta. It could not be done. Some of the richest men in Atlanta, when I originally started, would pat
423 me on the back and say, "Go ahead," and would subscribe $100.00. It could not be raised. It had to depend on outside capital. The Commission receives and scrutinizes our monthly statements regularly, with the view of seeing if the rates are too high, and if they can be reduced in the interest of the public. Capital receives and watches those monthly statements just as carefully, and it has requirements, which we have got to live up to in order to secure additional capital. One of those requirements is, as I have just been through with it, that the net earnings of the company must be double the interest on our bonds outstanding including those proposed to be issued. If we cannot comply with that, we cannot sell any bonds, and we cannot get any more capital to go on. It is axiomatic, and inevitable. That is an economic market condition controlling the flow of capital into enterprises of this kind. I am trying hard, Mr. Chairman, to confine this as much as I can. The failure, or the fact that a company of this character in its gas department is not receiving adequate rates, is a limitation on the possibility of the extension of the business. It works directly to the injury of the public. It is the worst condition, that the public can be put in. It defeats the very thing, that the public is seeking. I have just concluded financial negotiations, which began last April. It is another illustration of how figures and conditions crystalize in one's mind. A great deal of information and data had to be furnished to the bankers for consideration in connection with their proposed purchase of these bonds. This was compiled concurrently beginning last April; the negotiation went on, and it was based upon data reflecting conditions of last April, and prior to that. The time has gone so fast that in my own mind those facts and figures furnished the bankers have crystalized as part of the negotiations, and were furnished to them in good faith. I come back here, having closed subject to the approval of this com-
424 mission the sale of $4,500,000.00 of 7% General Mortgage Bonds. I find on my return here that the conditions have changed. Any change in the rates of the Company I have reported immediately to the bankers. We made an estimate in February of the year's earnings, a cash estimate for the year. Last February we had to do it for this purpose. On my return here from these negotiations, having just closed them, I find that, owing to the decrease in our gas rates, made effective June 1st, 1921, also to a decrease in street-railway earnings, beginning in October, and the continued high cost of gas materials and labor entering into our operating expenses, together with the shortage of water, which has necessitated purchasing all the power we can, and possibly our generating steam power in the near future, all my estimates of the 1921 results made in February, have changed. I am going to report those changes and any other changes, that take place, and give the bankers the option of going on with the trade or not, as they choose. I am not willing to go on and complete the transaction, and take their money, in the event this Commission approves

it, without their knowing all these facts, which have developed and transpired. I only mention that as one of the conditions in meeting the financial needs of a situation of this kind. I had intended to cover and go into the financial plan and construction plan of the Company, which included the gas department, for the next two years, but, if the Commission thinks that that is not pertinent to this inquiry, I won't take up your time with that, but the carrying-out of this plan and its consummation directly affects the possibility of successfully developing the gas department as much as any other department, and in our financial plants there can be no separation of the gas department from any other department.

The Company has to be financed as a whole. Those
425 requirements can only be furnished upon its showing as a whole, and the gas department could not be financed at all; it could not raise a dollar on any basis today. In this negotiation, which has just been completed, that test of earning was applied for the year ending August 31st, which was the period used—they use years as units—which just enabled us to just skin through and sell $4,000,000.00 of bonds. It would not support another bond. That amount of bonds, if the transaction is finally consummated, will be used to pay, so far as they will go, our floating indebtedness. It is for no other purpose. We have still got to raise, in order to carry out our plans—I am speaking now of our combined plants—for the next two years, about six and a half million dollars in cash, in order that the Company may go on and develop and meet the demands of the public for its service in all departments, and do what it should do. If between now and the end of this year there is any change, further change, in the conditions or the earnings of the company, as judged by the value December 31st, it won't be possible to get this additional money. The general mortgage that we have adopted as the plan for the financing, provides for the issuing of bonds in series with different maturities, bearing different rates to meet the money-market requirements at the times they may be issued. It is my hope in adopting this plan, or in our having it carried out, that after selling this four million dollars of bonds, which is primarily, certainly one of the most important objects, to take up the floating debt due to the loss in the gas department, that we can go on and successfully sell these bonds, to carry out our further plans in all the departments of the Company, which comprise Tugaloo development, further extension of the gas department to meet the needs of the public, and increase the service in all the other departments of the Company. That combined budget for the years 1922 and
426 1923 involves a total expenditure of about $12,285,594.00, which as I say, would clean up the gas department, and enable us to go ahead with the other work, which the Company has in view. That plan, which we have adopted, is the one we would like to carry out, that we would like to be enabled to carry out, to have the opportunity to carry out, and which I might say we will carry out, if given half a chance. We would increase the kilowat-hour capacity or out-put of the Company 266,000,000 kilowat-hours, which is more than 100% increase. I might say, and I think it is inter-

esting as a matter of information, that the completion of that comprehensive plan, which is one that has all been laid out among ourselves, and one not gotten up to submit, would mean a decrease in the unit cost of production of electric product of nearly 40%, pretty nearly cut in two. That is the only basis, upon which rates can be soundly and economically decreased, or ever will be permanently. The cost of that money, that we have just negotiated for, if the transaction is finally consummated with the approval of this Commission, will be 8.3 per cent. That is the trade. I have told a number of bankers, who had no interest in this transaction, in New York and the East, since I closed it, and they have congratulated me. They said under the conditions it was an extremely advantageous trade. That is not sufficient to keep this enterprise and its gas department developing and growing, and expanding, to meet the needs of the public. There must be a margin above that. If not, no one will construct such properties, including the gas properties. It takes initiative, energy, business ability, and constructive genius in addition to capital. Recognition of that is necessary in the rate of return as a practical matter, if the properties are to be built and continue building to serve the public. I am going to get through very much quicker, Mr. Chairman, than I would have, if you had not suggested to me that I try to confine myself to
427 gas. I am afraid I may not be doing that as much as you would wish, but I really think what I am saying is important in the right solution of this particular problem. I don't believe that this particular problem, or problems of a similar character, all over this country today, will be correctly and rightly solved unless the things I am speaking of, or trying to testify to, are realized by the public. The mistreatment of questions of this kind, or the uneconomic treatment, is largely responsible for the condition of general business in the country today. It is responsible for the condition of the steam railroads. It is responsible for the condition of the utilities generally over the United States. The utilities, including the steam railroads, are such large purchasers of materials, and such large employers of labor, that their condition of impoverishment has broken down, and dislocated the whole industrial fabric of the country, and it is not going to get going again until problems like this particular one are solved and solved rightly. As an illustration, I am going to tell you what has happened to the steel industry. In October 1920 the index number, expressing the volume manufacture of iron and steel, stood at 126.7 per cent. In July 1921, at 34 per cent. These index numbers are the percentages of the 1919 monthly average which is used as 100. These figures are significant, and show definitely the condition of the country, and how industry is located. When the condition of the steam railroads, which purchase, according to my information, about one-third of the total iron and steel produced, and the condition of the public utilities other than steam railroads, which probably purchase a very large additional amount—I would say again pretty nearly as much more—is studied and realized, we have not far to go to under-

stand what is the matter with the country. Our total wages
428 in 1921 in gas and all the departments were more than double what they were in 1917. Our wages in 1921 are 91 1/3 per cent more than they were in 1917. Steam coal in 1921 is nearly double what it cost in 1916. Gas coal in 1921 is more than 2 1/3 times whar it cost in 1916. Gas oil in 1921 is more than double what it cost in 1915. All prices of material we now use in 1921 are about 75 per cent more than the pre-war average. But the public are consuming more than 140 per cent more than the pre-war average in the gas department, and in all other departments. The utilities, including the steam railroads, employ something over two and a half million men. What I want the public, the body of the public to realize, is the fact that before we ever get business to going again these problems must be solved, and solved rightly, and that, to use an undignified word, to "soak the utilities," is about as unfair and foolish as if a man should "soak himself in the stomach." The -ffect and results are the same. He is depriving himself of any hope of improvement of business. The statements submitted show that this Company is not today receiving what the United States Supreme Court has said it is entitled to. The situation is far worse than that. It is not receiving, or has not received, taking the years 1917, 1918, 1919, and 1920, in its gas department, what this Commission has said it was entitled to receive at its minimum value by over a million dollars. When I look back over the period of those years, 1917 to 1920, I don't know how the Company existed through them. But for the faith in ultimate justice on the part of the owners, it would not have survived. Nothing but the courage of the men, conducting it and backing it, carried it through that period, but we are now facing a new period. Prices have become stabilized, that is, they are stabilized to the extent that we cannot look for very much change in the near future. My personal judg-
ment is that the change will be very gradual from now on.
429 We must get problems of this kind rightly solved, fairly and justly solved, not only in the interest of the public here in Atlanta, but in the interest of the public of the whole country, and its future growth. We have made fundamental errors, that must be corrected. Business cannot travel under the conditions I have described successfully any longer. We have got to get industry in step, running in parallel again, to use electrical terms. The present business conditions will continue until we have rightly solved this particular question, and other- like it. I believe firmly that public sentiment is changing, that the public is getting an understanding of these questions. An editorial appearing in the Atlanta Constitution within a few days, contains these sentences: "The completion of the Tugaloo project should be hastened to the utmost, and by whatever means or with whatever assistance may be necessary to produce that result, which in turn will meet the demand for a limited time only, just as the Burton project did; and in the course of the probable industrial development of the future, still other additional developments throughout the Blue Ridge Water-Shed will be imperative to keep pace with the constant demand, but

it is immediately necessary to push the Tugaloo development to forestall a repetition in the 1918 to 1921 period of power famine." We are very near a power famine. It will not take many more days of this drought to bring about a power famine. Similar conditions, under which we have been operating for the past four years, will bring the same results in the gas business. It will go on repeating itself, and repeating itself, and the whole trouble is so easy of correction, and there is only one right way to do it. Here is a letter here, addressed to the Chairman of this Commission, under date of October 25th, from the town of Kirkwood, signed by the Mayor, that is illuminating. I am not going to read it to the Commission, because the Commission has the original, but there are expressions in that letter, that give me great hope, I believe
430 the public is reaching an understanding of these questions. The public must reach an understanding of these questions, to get what it is after. There is only one road open to them. There is only one method of getting it. That method is this, which is an extract from a decision of the United States Supreme Court, which this Commission itself quoted in its decision of September 22nd, 1920: "We hold that the basis of all calculations as to reasonableness of rates, must be the fair value of the property being used for the convenience of the public, and, in order to ascertain that value, the original cost of construction, amount expended in permanent improvements, amount of market value of bonds and stock, and present as compared with the original cost of construction, and its probable earning capacity, are all matters for consideration. What the Company is entitled to ask, is a fair return on the value, which it employs for the public conveniences. On the other hand, what the public is entitled to demand, is, that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth." The same Court held, that the value of the property is to be determined as of the time, when the rate inquiry is being made, that is to say, the present value of applicant's property must be ascertained. Why not apply that rule today? It is perfectly plain; it is the law; it is right; it is just. If that has been applied to us, there is no telling what might be here. I have a very clear idea of what would be the conditions, if it had been applied to us, but it is extremely difficult to calculate, to put in definite figures, the untold benefits of power, even to the community of Atlanta, and to the whole part of the State, which we serve, if that simple rule had been applied to this Company. I am hopeful looking to the future. As I said at the outset, my interest in this
431 whole matter is the broad constructive growth side of it. That has been my job. I am hopeful that a realization of these things is coming, and is near at hand, because, it means so much in the growth of Atlanta, and in the growth of the State. The problem in this gas department is exactly like all the rest of it. Everything that one might say with regard to the gas department applies equally to every other department. The problem, as I have said, is fundamental. It is a problem of principle. Look the country over, and see what it has brought us to. We are scrapping

railroads, not building them; we are scrapping utilities, not building them. There are no constructive enterprises of any consequence going on in the country. We have reversed our energies, and we are scrapping the thing that built the country and made it. We have got to go back to first principles, return to economic laws, which are irresistable, and inevitable, and inexorable, before we are ever going to make the progress in the future that we have in the past. We are in a state of arrested dislocation business throughout the country, and it is largely due to mistakes and errors in handling this particular fundamental principle. I am so interested in the question, Mr. Chairman, that I am afraid at times I may be misunderstood, misinterpreted, on account of that interest, that very great interest, in this work, in which I have spent my life. My interest in the right solution of it is not a personal interest. Obliterate me; wipe me out; what happens to me is of no consequence in this problem. The remaining years I have got at the job are as nothing, but I know so thoroughly and realize so thoroughly how wrong we are, and in that I include myself. I am not complaining or criticising the Commission. I think the Commission has always tried to do its duty. I have nothing but respect for each member of it, and in saying what I have here today, there is no motive
432 in me except to help and assist you with the truth, the facts.

As I have said, I feel that the owners and managers are more responsible for these conditions than the regulatory authority, or governmental bodies. We committed the original errors, but they have got to be corrected in some manner, in order to keep these properties going forward, not this one alone, but all over this country. I want you to consider what I have said only from the point that I have just alluded to, that is, that I have said it in the hope that it might be of some help and some interest, and some use in deciding this question, and that I have said it with the utmost respect, without any intention of criticism, or any other feeling or state of mind with regard to your acts. I am ready and always have been to do my best in accordance with your orders or whatever action you take.

433 Also a ruling by the Railroad Commission of Georgia, dated August 6th, 1908 in brief as follows:

"Your petition against the Atlanta Gas Light Company for a revision of rates, etc., was considered by the Commission at its meeting on July 30th, 1908, and the Board was of the opinion that no change should be made at the present time in the rates and regulations of said Company, and your petition was declined.

Yours very truly,

GEO. F. MONTGOMERY,
Secretary."

Also an order of the Railroad Commission dated August 14, 1918, in brief as follows:

In re Application of ATLANTA GAS LIGHT COMPANY for Increase in Rates for Gas Service Furnished to Its Customers in Atlanta and Suburbs.

Upon consideration of the record in the above entitled matter and of the evidence and arguments submitted at hearing had thereon, it is ordered: That on and after September 1st, 1918, and until the further order of this Commission, the following scale of rates shall be the maximum scale of rates to be charged by the Atlanta Gas Light Company, for the class of service indicated:

For the first 10,000 cu. ft.....	$1.25	per	1,000	cubic	feet.
For the next 20,000 cu. ft.....	1.15	"	"	"	"
For the next 20,000 cu. ft.....	1.05	"	"	"	"
For all over 50,000 cu. ft.....	.95	"	"	"	"

Discount: Subject to a 10¢ per 1,000 cu. ft. discount if bills are paid on or before the 10th of the month.

Minimum Monthly Charge: $1.00 per customer meter.

Ordered further: That the quality of gas supplied to its customers in Atlanta and vicinity by Atlanta Gas Light Company shall show an average monthly minimum of 575 B. T. U.; provided that at no time shall it be permissible for said Company to supply its patrons with gas containing less than 550 B. T. U., to be charged for on basis of the rates above set out.

434 Ordered further: That daily calotimeter tests for the heating value of gas be made, and monthly statements, under oath, be forwarded to the office of the Commission, showing the result of such tests; the tests referred to in this section of the order, shall be made at the gas house and also at a point located approximately one mile from said gas house.

Ordered further: That Atlanta Gas Light Company file with this Commission monthly statements showing the result of its operating—that is, receipts, disbursements, etc., in detail, showing also comparison with operations for the same month in the preceding year.

It is hereby expressly declared that the above increases are authorized upon the express condition that the same are necessary because of emergencies arising out of national conditions existing at this time, and upon the further condition that when this emergency shall have passed, the old rates shall be restored upon the order of this Commission.

By order of the Commission:

(Signed) C. M. CANDLER,
Chairman.

ALBERT COLLIER,
Secretary.

Also the following excerpts from a report of the Railroad Commission dated Aug. 14th, 1918, re application of Georgia Railway & Power Company for increased fares on Street Railway lines and for increased rates for electric current:

"In the following estimates, the Commission has separated the properties owned by the Georgia Railway and Power Company, and those leased by it from the Georgia Railway & Electric Company, and later consolidated them into one complete property as operated by the Georgia Railway & Power Company. We have not undertaken to arrive accurately at actual values, but have estimated minimum values."

435 "The Commission is abundantly satisfied that it can, without difficulty arrive at the very conservative estimate of the minimum value of the property of this Company in the public use. The Company may complain at our use of a minimum value, rather than the fair value, but certainly the public cannot."

Depreciation.

"The allowance for annual depreciation of 2½% on the estimated value of physical properties used, we are satisfied is not too high."

"N. B.—Included in the remainder of net income, supra, $2,196,727 is $165,170 of dividends from Atlanta Gas Light Company. Net income should therefore be reduced by this sum or the value of the property in use increased by the value of the Atlanta Gas Light Company property which in another proceeding we have estimated at the minimum $3,500,000."

436 Also the following excerpts from a report of the Railroad Commission dated September 22nd, 1920, re application of Georgia Railway & Power Company for increases in Electric Light & Power Rates, Gas Rates and Street Car Fares:

"It becomes necessary therefore to inquire as to what return, if at this time, fair and reasonable.

"The record shows that there is a large demand on applicant for services, especially for current for industrial power, which it cannot meet, without further development of unused water powers, and that large sums of new capital are necessary for such additional developments. Because of financial conditions now existing, it shows that it has been unable to secure needed capital from the sale of its bonds, or from short term loans except at very high rates of interest and only in limited amounts. New capital cannot be obtained by public utilities at all, except where rates are such as will afford reasonable assurance, with efficient management, of earnings sufficient to care for legitimate fixed charges and establish for them a basis of credit. This does not mean that rates should be such as in themselves will supply new capital, but that they be such as to justify capital investments in competition with other business ventures.

"A public utility with rates providing only a five or six per cent return cannot secure new capital in competition with a private business earning an eight or ten per cent return. It should be further borne in mind that because of the decreased purchasing power of the dollar a return of eight per cent now is not the equivalent of a six per cent return prior to the war.

"In a discussion of the identical question here considered the Supreme Court of the United States in Lincoln Gas Co. vs. City of Lincoln, 250 U. S., page 256, said:

"'We cannot approve the finding that no rate yielding as
437 much as 6 per cent upon the invested capital could be regarded as confiscatory, in view of the undisputed evidence, accepted by the master, that eight per cent was the lowest rate sought and generally obtained as a return upon capital invested in bankin-, merchandising and other business in the vicinity; seven per cent being the legal rate of interest in Nebraska."

"'It is a matter of common knowledge that, owing principally to the world war, the costs of labor and supplies of every kind have greatly advanced since the (rate) ordinance was adopted, and largely since this cause was last heard in the Court below, and it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future.'

"The Supreme Court of California in the San Diego Water Co. Case, 118 Calif., Page 588, discussing the question of what constituted a proper return, said:

"'In fixing water rates, it is the duty of the City Council to provide for a just and reasonable compensation of the Water Company. Anything short of that is simple confiscation, and is not only a violation of constitutional rights but is an extremely shortsighted policy. Rates ought to be adjusted to the value of the service rendered, and this means that the water companies should be allowed to collect annually a gross income sufficient to pay current expenses, maintain the necessary plant in a state of efficiency and declare a dividend to stockholders equal to at least the lowest current rates of interest, not on the par or market value of the stock, but on the actual value of the property necessarily used in providing and distributing the water to consumers.'

"This Commission is of the opinion, after mature consideration, that a return on the fair value of the property and capital employed by applicant of eight per cent is reasonable and really needed to enable it to render to the public, under existing conditions, efficient and adequate service, and the schedule of rates established in connection herewith is intended to provide approximately this return. Out of this percentage of net income applicant must meet its fixed
438 charges, such as bond interest, sinking fund requirements, rentals for leased properties, etc.

"The Commission has considered and treated the gas properties and business of applicant separately and apart from its other departments. Because of the prevailing high prices of coal and fuel oil, operating costs have been and are abnormally high. For the year ending December 31st, 1919, the earnings of the Gas Department showed a deficit of approximately $120,000.00 under an eight per cent return on the fair value of the property in use plus working capital. The 1920 business has shown an actual loss, which if continued through the entire year, the Commission estimates would total over $100,000.00 or over $400,000.00 under an eight per cent return.

"Should present coal and fuel oil prices continue, with the recent increases in freight rates applying on coal and oil, the Commission is satisfied that the new schedule of rates herewith prescribed, will not earn in excess of an eight per cent return. The Company admits the immediate need of improvements and enlargements in its plant to meet the demands for increased, and in some sections improved service. President Arkwright in his testimony (pages 179 et seq. of the Record) enumerated several improvements urgently necessary at this time that adequate and efficient service might be rendered. He also stated that needed apparatus and mains should be provided in order that better and more uniform pressure might be had in the West End section, Ansley Park, and the Virginia-Highland Ave. Section."

439 Depreciation.

"The Commission, as in 1918, notwithstanding increased prices, has allowed a charge against gross revenues, at the average rate of 2½% on physical property values to cover annual depreciation and obsolescence * * *.

"The soundness of these principles cannot be denied. It seems a waste of time to restate them but for the fact that there apparently exists in the public mind a disposition to question their application in the instant case.

"The Commission is fully satisfied that in using an average rate of 2½% its allowance is not excessive.

"SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwise provided for.

For the first 10,000 cu. ft.	$1.55	per 1,000 cu. ft.
" " next 20,000 " "	1.45	" " " "
" all over 30,000 " "	1.35	" " " "

Discount: Subject to 10¢ per 1,000 cu. ft. discount if bills are paid on or before 10th of the month.

Minimum monthly charge: $1.00 per customer per meter.

440 Also the following protest of Georgia Railway & Power Company of October 7th, 1920, as follows:

Georgia Railway & Power Company.

October 7, 1920.

To the Honorable Railroad Commission of Georgia,
Atlanta, Georgia:

In re Application of Georgia Railway and Power Company for Increases in Electric Light and Power Rates, Gas Rates, and Street Car Fares (Your File No. 13946).

Referring to order and opinion of the Railroad Commission of Georgia, on petition of Georgia Railway and Power Company for increases in rates and fares, decided by the Commission on September 22nd, 1920, Georgia Railway & Power Company desires to have filed as a part of the record in such case, this its respectful protest against the valuation fixed upon its plant and properties by the Commission.

Georgia Railway & Power Company also desires to file this its respectful protest against the reasonableness or fairness of the rates and fares prescribed by the Commission in its said order dated September 22nd, 1920, as being inadequate to meet the actual expenses of operation and permit of a fair return upon the fair value of the properties devoted to the public use.

The request to have filed this protest is made at this time in order that Georgia Railway and Power Company may not be placed in the position of acquiescing in the correctness of the valuation or the adequacy of the rates prescribed by the Commission.

GEORGIA RAILWAY AND POWER COMPANY,
By P. S. ARKWRIGHT, *President.*

Also the following excerpt from the Commission's order of Feb. 10, 1921:

"When this value was fixed by this Commission in 1918, we took occasion to say then as to the value of applicant's property as a whole, 'We have not undertaken to arrive at actual values but have estimated minimum values.' If the value considered by the Commission in 1918 of $3,500,000 was correctly stated as a minimum value can there be any doubt that it is any more than a minimum value of this date?

441 "In discussing the value of applicant's property as a whole in 1918 in the case before this Commission, file 13946, which consideration covered the gas properties now under consideration, the Commission further said: 'The Commission is abundantly satisfied that it can, without difficulty, arrive at a very conservative estimate of the minimum value of the property of this Company in the public use. The Company may complain at our use of a minimum value rather than the fair value but certainly the public cannot.'"

442 Also an excerpt from an order of the Railroad Commissi dated February 10, 1921.

"Ordered: That the following schedules of rates shall be th maximum rates to be charged by the Georgia Railway and Powe Company for gas metered on and after March 1st, 1921, and unt further ordered by this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwi provided for.

For the first 10,000 cubic feet, $2.00 per 1,000 cu. ft.
" " next 20,000 " " 1.95 " " " "
" all over 30,000 " " 1.90 " " " "

Discount: Subject to 10 cents per 1,000 cubic feet discount if bil are paid on or before the 10th of the month.
Minimum monthly charge: $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point and Surroun ing territory.
Rate: $2.10 per 1,000 cubic feet per month.
Discount: Subject to 10 cents per 1,000 cubic feet discount if bil are paid on or before the 10th of the month.
Minimum monthly charge: $1.00 per customer meter."

443 Also an excerpt from an order of the Railroad Commissi of May 28th, 1921, in brief as follows:

"Ordered: That the following schedules of rates shall be the max mum rates to be charged by the Georgia Railway and Power Co pany for gas metered on and after June 1st, 1921, and until furth ordered by this Commission, for service as indicated:

SCHEDULE O.

Gas Rates, Monthly Basis.

Applicability: Atlanta and surrounding territory, not otherwi provided for.

For the first 10,000 cubic feet, $1.75 per 1,000 cu. ft.
" " next 20,000 " " 1.70 " " " "
" all over 30,000 " " 1.65 " " " "

Discount: Subject to 10 cents per 1,000 cubic feet discount if bil are paid on or before the 10th of the month.
Minimum Monthly Charge, $1.00 per customer meter.

SCHEDULE P.

Gas Rates, Monthly Basis.

Applicability: College Park, Decatur, East Point and surrounding territory.
Rate $1.85 per 1,000 cubic feet per month.
Discount: Subject to 10 cents per 1,000 cubic feet discount if bills are paid on or before the 10th of the month.
Minimum Monthly Charge, $1.00 per customer meter."

44 Also a protest of the Georgia Railway and Power Company, by P. S. Arkwright, President, addressed to the Railroad Commission of Georgia, dated May 31, 1921, in brief as follows:

"Georgia Railway & Power Company.

To the Honorable Railroad Commission of Georgia,
Atlanta, Georgia:

In re Order of Railroad Commission Fixing Gas Rates to be Charged by Georgia Railway & Power Company.

Referring to the order and opinion of the Railroad Commission of Georgia of May 28, 1921, copy of which was served on this company May 30, 1921, ordering reductions in the rates being charged for gas by this Company, such reductions to be effective June 1921, Georgia Railway & Power Company desires to have filed as part of the record in such matter this its respectful protest against the ordering of reduced rates for its gas service without notice to it, without a hearing, and without giving it an opportunity to be heard; against the valuation fixed upon its gas plant and properties by the Commission, and against the fixing of such valuation without notice to it, without a hearing, and without giving it an opportunity to be heard; against the rates so prescribed by the Commission in its order dated May 28, 1921, and against fixing such rates without notice to it, without a hearing, and without affording it an opportunity to be heard; against the deduction of any sum from its operating expenses, and against the deduction of such sum without notice to it, without a hearing, and without affording it an opportunity to be heard.

Protestant respectfully directs attention to the published rule of this Commission known as Rule 12 as follows:

'Both in cases of complaints and when the Commission initiates action notice shall be given to the persons or corporations interested in or affected thereby ten days before the hearing, except in cases for the fixing of joint rates when thirty days' notice shall be given, and shall give to such persons or companies an opportunity to be heard.'

445 Protestant respectfully represents that the order reducing its gas rates was made by the Commission upon its own initiative; that no notice was given to this protestant that a reduction in its gas rates was to be considered; that no hearing of any kind was had, and that no opportunity was afforded this protestant to be heard on any proposal to reduce or consider the reduction of the rates charged by it for gas, and that the rule above referred to was not followed.

In contrast with the method of ordering a reduction in its gas rates, protestant would respectfully call attention to the method pursued in acting upon its applications in the last several years for approval of an increase in its gas rates.

Following the declaration of war by the United States in 1917 the costs of labor and materials entering into the making and supplying of gas by petitioner were greatly increased. So much so that the rates then being charged for gas were not sufficient to pay the costs of making and supplying the gas. While petitioner anticipated that these costs would so increase as to make the rates then being charged for gas inadequate, it was familiar with the practice of this Commission to require that the public utility company should through actual experience show a history of losses under increased prices for materials and labor before an application to adjust the rates to meet these costs would be entertained. Therefore, while suffering a loss on the rates then authorized by this Commission, this company had to continue to suffer such loss before it could in accordance with the practice of the Commission file an application for relief in the nature of increased rates to meet such increased costs.

This company did on April 16th, 1918, file with this Commission an application for increased gas rates in order to partially meet the increased costs. In accordance with the rule of the Commission known as Rule 12 above referred to, the Commission set this application for a hearing for May 21, 1918, and required the

446 Company to serve notice upon the Mayor of each municipality in which it did business, and to publish notice of the petition and hearing in the newspapers published in each County in which petitioner did business. The hearing was finally concluded on or about June 13, 1918. An order was granted by the Commission on or about August 14, 1918, granting only in part the increased rates applied for, such increased rates so granted to be made effective September 1, 1918, but the effective date of which was held up by injunctive proceedings and did not become operative until on or about November 1, 1918.

On this application the notice, hearing and decision required a delay of approximately five months after the application was filed and many more months after the need for relief arose before any relief became effective.

The relief provided by this order proving inadequate and there being further large increases in the cost of manufacturing and supplying gas, protestant was faced with the necessity of again applying for an increase in its gas rates. Consequently on or about April 21,

1920, it filed with this Commission an application to approve an increase in its gas rates to meet the increased cost. Before filing this application it was compelled to sustain a loss for a sufficient period of time to create a history of operation under then conditions before it would be entitled to have its application considered. This application, filed on or about April 21, 1920, was set for hearing on June 1, 1920, and protestant was required to give notice to the Mayor of each municipality in which it does business, and to publish notice of the petition and hearing in the various newspapers published in the counties where it does business. A hearing was had, and on September 22, 1920, an order was passed by this Commission authorizing only in part the increased rate applied for, which increased rates so authorized were to become effective October 1, 1920.

In connection with this order of September 22, 1920, protestant was the Commission's practice to require at least thirty days' notice of this Commission the sum of approximately $400,000.00.

147 Subsequent to the filing of this petition and during its pendency there were other further large increases in the cost of manufacturing and distributing gas, so that the rates authorized by the Commission in its said order of September 22, 1920, were wholly inadequate to cover the costs of making and supplying gas. Consequently protestant was forced to make an additional application to the Commission for approval of increased gas rates to meet the increased costs and to yield it a reasonable return on the value of its property used and useful in the public service. Protestant filed such application on or about November 28, 1920. This application was set for a hearing for January 13, 1921, and decision in the case was made on February 10, 1921, granting only in part the increased rates applied for, and made effective March 1, 1921.

In connection with the foregoing applications for increases in gas rates petitioner represented to the Commission that it was sustaining a loss under the rates it was required to charge; that its ability to continue to furnish gas service was being imperilled; that it was in a distressful financial condition because of its inadequate rates, and urged the need of immediate relief in the nature of increased rates to preserve its credit and insure its ability to continue to furnish service.

The Commission informed petitioner that its rules required notice and hearing before such applications could be acted upon, regardless of the condition of petitioner, the merits of its application, or the urgency of the need for relief, and that in cases of this character it was the Commission's practice to require at least thirty days notice to be given before the application could be heard.

In its order of August 14, 1918, the Commission found what it designated as the "minimum value of the property of this Company in public use." The Commission further stated in connection with this minimum value that "The Company may complain at our use of a minimum value rather than a fair value, but certainly the public cannot."

148 Based on this minimum valuation, which is not the fair value of the property, the rates which this Company has

been compelled to charge by order of the Commission have failed to yield the operating expenses, taxes, renewals, and return of eight per cent. on such minimum value for the years 1917 to 1920, both inclusive, by the amount of $1,029,500.00. That is to say, under the rates fixed by this Commission this Company has been compelled to sustain a loss under a reasonable rate of return on the said minimum value by the sum of $1,029,500.00 in the four years since approximately the entry of the United States into the World War. Upon the fair value of the property the deficit for such years would be very much more.

The existing rate for gas, which has been reduced by the order of the Commission of May 28th, 1921, went into effect only on March 1, 1921. The month of April was the first full month's operation under this rate. It is not practicable to judge the effect of the rate by only one month's trial. The Commission required the Company to file with it a statement of its earnings and expenses for the month of April, 1921. This statement was filed with the Commission on May 20th, 1921. The statement showed some profit, though not as great as appeared, because of certain necessary adjustments which should be made. Nevertheless, based on this one month's statement the Commission did on May 28th order a reduction in the rates effective June 1st, 1921, which order was made without any notice, without any hearing, and without any opportunity being afforded protestant to be heard.

No consideration whatever seems to have been given to the losses which protestant was compelled to sustain under the rates theretofore fixed by this Commission, although such losses were made greater by the adherence of the Commission to its rule requiring notice and hearings before rates could be increased.

The order of the Commission of May 28th attempts to fix a "rate base" which should be, of course, the fair value of the property used and useful in the public service. In arriving at this
449 "rate base" the Commission used what it denominated in its order of August 14, 1918, as a minimum value of the property, stating that it was not the fair value. To this has been added the book cost of the added property acquired since that time, thus fixing the so-called "rate base" as $4,533,635.00. This is not the fair value of the property used and useful in furnishing gas service by this Company. The fixing of a fair value of the property of this company is a judicial question. Likewise, it vitally affects this company and its ability to attract the necessary additional capital for the expansion of its gas service. In a matter of this nature, and so vital to the interests of this company and the future of its gas business, protestant respectfully represents that it should have notice of a hearing and an opportunity to be heard prior to the fixing by this Commission of a fair value of its property for rate making or other purposes. This Company respectfully protests this valuation as being unfair and inadequate.

Mr. H. E. Riggs, in his report made for and upon the employment of this Commission, stated that the minimum value of this gas property which could be used would be not less than $5,299.435, and

that the "fair value," which is the value contemplated by the law, for this property would be $7,512,293.00.

Protestant therefore earnestly protests the fixing of a value of its gas property, used and useful, by the Commission at $4,533,635.00 as either a minimum valuation which could under any circumstances be used as a base for rate making, or as the fair value which the law requires shall be used as a base for rate making.

Protestant respectfully represents that it was given no opportunity to examine the report of Messrs. Haskins & Sells upon the audit of its accounts, nor has it as yet had an opportunity to examine such report. Although the deductions suggested from its statement are negligible in the final results, nevertheless, petitioner protests against the deduction of any items from its expense account, and particularly to such deductions without notice to it or hearing, or affording it an opportunity to be heard before such deductions are made.

Petitioner respectfully represents that by order of this Commission it was compelled to continue to operate at a loss when prices of material and labor entering into the cost of making gas were going up, and one or two months' experience would not be accepted as a criterion on which to base an increase in rates. Petitioner respectfully protests that it is improper and unfair to base an order reducing rates on only one month's experience.

Petitioner respectfully protests against the reduction in rates ordered by the Commission, and states that the rates so fixed are not adequate to yield the cost of furnishing the service, including a reasonable return on the "fair value" of its property, used and useful in the service. Petitioner respectfully represents that the method followed in fixing the value of its property for rate making purposes, and ordering a reduction in its rates without notice, without a hearing, and without affording it an opportunity to be heard, especially when contrasted with the method followed in considering its previous applications for increased rates, injures, if it does not destroy the ability of petitioner to induce the investment of the necessary additional capital required to improve and expand its gas service, and to make the improvements and betterments which the Commission, itself, from time to time requires.

The request to have filed this protest is made at this time in order that the Georgia Railway & Power Company may not be placed in the position of acquiescing in the correctness of the valuation or the adequacy of the rates prescribed by the Commission, or in the correctness of the practice of fixing a valuation of its property, making changes in its operating statements and ordering reductions in its rates by order of the Commission without notice to it, without a hearing, and without affording it an opportunity to be heard.

Respectfully,

GEORGIA RAILWAY AND POWER COMPANY.
B. P. S. ARKWRIGHT,
President.

Atlanta, Ga., May 31, 1921.

451 Complainants introduce also, excerpts from the 48th Report of the Railroad Commission of Georgia, which were in brief as follows:

Local Utility Problems and Rates.

In its last two annual reports the Commission called special attention to the increasing difficulties, arising out of war and resultant conditions, confronting local utilities in this State, as also throughout the entire Country.

From early in 1915 until late in 1920 operating expenses steadily increased, without, at any time, corresponding increases in revenues. The peak of high labor and material costs, with few exceptions, was only reached in October, 1920.

Since 1917 nearly every local utility in the State has made one or more applications for increased rates. With the first of these applications, the Commission adopted the policy, possibly a mistaken one in view of subsequent events, of holding any increase granted down to the most meagre return which it believed could be sustained in the Courts, should any such be carried there by the utilities. This policy was based upon the thought that conditions were abnormal, of uncertain duration and liable to change at any time and quickly.

The Commission was of the opinion that from the public's standpoint the rate situation should remain in the Commission's control and this control such, that if costs of service were merely transitory and should be for any reason suddenly lowered, the public would not bear an excessive burden during the period of inquiry, always requiring some time.

The applicants therefore were in effect told to go ahead with the minimum increases, granted, try out the prescribed rates and report results to the Commission monthly, when if in actual use they were found to be low, the Commission would examine into the situation again.

The records of this Commission will show that in only a few instances under exceptional conditions, for the past three years, has any utility received the increases it asked, and in most cases sustained with uncontested evidence. The policy adopted and consistently followed, with the persistent increases in labor and ma-
452 terial costs over which neither the utilities nor the Commission had control, resulted in second, and in a few instances, third applications for relief.

During the past six months only has there been much question by the public as to the justness and reasonableness of the increases granted by the Commission.

During this period, cotton, our principal state product, has slumped tremendously in selling price. The purchasing power of by far the largest class of our population has been reduced to almost nil. Our manufacturers and merchants were caught with large stocks of high priced materials and high cost merchandise in shop and store, unable to sell their products and goods at cost, and unable, without causing distress, to collect for such sales as had been made

in the spring and summer of 1920. Business in Georgia, as elsewhere, came to a halt and stagnation resulted.

Business forgot the years of plenty and high tide, of unrestrained profit and liberal expenditures for every gratified want and criticism of every increase in the cost of living, however small, naturally became rife. It was a psychological resultant. Patrons of the utility at once said we are making nothing; many of us are actually losing money and only carrying on our business or running our factories to keep our organizations together. Why should the utilities be allowed to earn six, or seven or eight per cent; why should they not share losses with the general public?

The Commission heard these arguments week after week; some of its members, at least, have business interests which have been affected like these and have had a large degree of sympathy with the suggestions thus presented.

The argument however, could properly only be addressed to the altruistic. It could properly be made to the managements of these utilities but this Commission was and is utterly without power to enforce it in practice.

Private property, even though devoted to public use, remains private, property. Its owners have certain constitutional rights. No court commission or Legislature can deny or abridge these
453 rights. The members of this Commission are under oath to respect them.

We have, in every instance, held their values to the lowest possible figures consistent with well defined principles as to valuation. We have held their returns on these minimum values to figures only short of a denial of what is reasonable.

We have done this in spite of the certain knowledge that during the recent years of plenty, even of abundance, these utilities had to content themselves with increases of ten, fifteen, twenty, twenty-five, or in a few instances, higher percentages, when every product sold had been increased from fifty to three and four hundred per cent.

The Commission was more intent on keeping these utilities going and able to adequately serve the public with rates that would meet operating expenses, taxes and depreciation, than it was for providing the reasonable returns which, under the law, they had the right to demand, even in times of universal depression.

Under modern conditions of social and business life their services are no longer mere conveniences, they are necessities. For three years or more there has been no substitute service obtainable by the public at a lower or even as low a cost as these essential services rendered by the various utilities.

The suggestion that prices of labor and essential materials are now declining and that rate should be immediately reduced, is now being urged.

Common labor is cheaper, but it does not count as much in operating cost as skilled labor nor as in construction cost. Skilled labor is a very large item in utility operating costs, and it has not as yet submitted to material reductions.

Taxes, insurance, rents, interest, freights, depreciation have not decreased. The cost of raw materials has declined but is yet far

above pre-war or normal cost. It has not yet stabilized, nor can present material cost be safely used as a permanent basis of rates. Monthly reports of utilities to this Commission clearly show that the increased rates granted by the Commission are not affording excessive returns, even on pre-war values under the price reduc-
454 tions in raw materials which have so far come about.

The Commission is keeping in close touch with the situation, and is desirous and ready, the hour actual conditions justify, to make reductions in rates.

This Commission believes with Prof. H. E. Riggs, of the University of Michigan, who says, "We cannot get away from the fundamental truths, first that our present day civilization must have the services rendered by these utilities; second, that we can build them with the money of the taxpayers or as private enterprises; third, that if they are to render satisfactory service they must grow just as fast as the communities they serve, and fourth, that if private capital is to go into regulated utilities there must be the reasonable assurance of a fair return on the investment."

It is unfortunately true, that the overwhelming bulk of the capital now in utilities in Georgia is from outside state sources. Our home capital is limited, it is not sufficient for our ordinary agricultural and industrial demands. Such as we have is not accumulated in such individual control or amount as that it has to accept investments affording six or seven per cent. We therefore, because of these conditions, have heretofore had to rely on outside capital for the development of public service undertakings. There is still need of such capital. It should receive fair treatment. This Commission has not been willing to deny it this treatment, so long as it honestly serves us.

It is also true that this Commission has not desired nor does it believe it has in a single instance, placed an undue rate burden on the public. The principles governing rate making by a regulatory Commission are simple. The public must not be overcharged. The utility is entitled to such rates as, with capable management, will afford it a reasonable return upon the fair value of its property used in the public service. It has been truly said, the rate Commission in maintaining a delicate and even balance between these two poles of essential right has a great responsibility and a most difficult undertaking.

455 Office of the

Railroad Commission of Georgia,

Atlanta.

December 23rd, 1909.

File No. 9162.

Circular No. 314 is hereby amended by substituting therefor General Order No. 14, which becomes effective this day as follows:

General Order No. 14.

All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed by this Commission, whether such rates are the result of voluntary action upon the part of any company, corporation or person subject to the jurisdiction of this Commission, or otherwise, are hereby established as the rates of the Railroad Commission of Georgia, and no such rates shall be discontinued nor raised without the consent of the Railroad Commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the Commission. And any and all facilities, privileges or service, now in effect or practiced, or hereafter made effective, extended or practiced, which give, grant, extend or allow patrons, shippers or other persons transacting business with said companies, corporations, or other persons as much or more of the privileges, facilities or service to which they are entitled by law or by any rule, regulation or order of this Commission, whether such privileges, facilities or service are given, granted, extended or allowed as the result of voluntary action upon the part of such companies, corporations, or persons, or otherwise, are hereby established as the requirements of the Railroad Commission of Georgia, and no such privileges, facilities, or service shall be discontinued without the consent of the Railroad Commission first being obtained, but all such privileges, facilities, or service shall be given, granted, extended or allowed without hindrance, the same as other requirements of this Commission; provided that nothing herein contained shall operate as repealing in any way the provisions of Passenger Rule No. 7.

By order of the Board:

H. W. HILL,
Chairman.

CAMPBELL WALLACE,
Secretary.

456 Complainants introduced an affidavit of H. M. Atkinson, in brief as follows:

He is Chairman of the Board of Directors of the Georgia Railway and Power Company and has been since January, 1912; that prior to that time he was the Chairman of the Board of Directors of the

Georgia Railway and Electric Company and had been continuously since its organization in 1902; that he has been continuously engaged in the electric lighting, street railway and power business in the city of Atlanta for a period of 30 years, and that he has been identified with the ownership and management of the properties of the Atlanta Gas Light Company since 1903, and is thoroughly familiar with the cost of financing, constructing, maintaining and operating street railway electric light and power and gas properties in the city of Atlanta.

That in addition he has had extensive experience in the financing, construction and operation of steam railroads, in the Southeast, and also in the business of banking.

That in the financing, construction, operation and management of these properties and enterprises he has given careful study to and has familiarized himself with the subject of unit costs, price levels, mediums of exchange, money values, and variations in the price of commodities or unit costs as affected by the fluctuations in the exchange value or purchasing power of money.

That most commodities have value because, in the first instance, of the use to which they may be put in the present organization of society, whereas money is valuable not because of anything inherent within itself or because of any direct utility it may serve, but because of what can be secured with it; that is, as a medium of exchange and as a measure of the value of other commodities. The value
457 of money is equivalent to its purchasing power. There is no way of expressing this purchasing power except in terms of what money will buy.

That while as a standard or measure of value the chief characteristic desired of money is stability, experience shows that the value or purchasing power of money fluctuates according to supply and demand the same as any other commodity. That as the supply of money increases or the demand diminishes, money becomes cheaper and the price of goods in general tends to rise to a higher level. Conversely when the supply of money is diminished or the demand increased the unit value of money increases and the price of goods falls to a lower level.

That a careful study of prices, price levels and the relation between price levels and value shows that, assuming that the dollar has a purchasing power of 100 units in 1914, the supply of money has subsequently so increased and its purchasing power so correspondingly diminished that in September, 1921, it took $1.70 to equal the 100 units of purchasing power possessed by the dollar in 1914; or to put it another way, one dollar in September, 1921, had only 58 units of purchasing power as compared to the 100 units of the 1914 dollar.

In placing an expression of money value on a property at the present time equivalent to the purchasing power or exchange value at which valued in dollars in 1914, it must be borne in mind that the 1914 expression of value was in dollars of 100 units of purchasing power, whereas any valuation made in September, 1921, would necessarily have to be in dollars of only 58 units of purchasing power

each. To give the property, therefore, in September, 1921, a money value expressed in dollars equal in exchange value, based on the price level of other commodities, to the 1914 expression of money value, means that the September, 1921, expression of money value must be 1.70 times as much as the 1914 expression of money value.

458 To insist that a given property should be valued in September, 1921, at the same value expressed in dollars of only 58 units of purchasing power each that it was valued at in 1914 in dollars of 100 units of purchasing power each is to declare that the intrinsic value or exchange value of the property in September, 1921, was only 58% of what it was in 1914.

That part of the physical properties of the Atlanta Gas Light Company in existence on January 1, 1914, and valued at that time at $3,897,992.00, in a revaluation as of September, 1921, would, in order to give the same properties an expression of money value of the same number of units of purchasing power as possessed by the 1914 valuation, have to be valued at 1.70 times $3,897,992 (the 1914 valuation) or at $6,826,586.40.

That as Chairman of the Board of Directors of the Georgia Railway and Power Company he has recently negotiated the sale of an issue of $4,000,000 Georgia Railway and Power Company General Mortgage 20 year 7% Gold Bonds; that the bonds were sold on the best offer obtainable after weeks of negotiations, and that the money procured from the sale of these bonds cost the Company at least 8.3% per annum.

That the present legal rate of interest in Georgia is 7% per annum and that money may be legally contracted for at a rate of 8% per annum; that the rate of interest now being charged by Banks in Atlanta on first class commercial paper and on first class secured notes is from 7 to 8% and that this rate prevailed throughout the year 1921; that the rates of interest on such paper are uniformly and universally lower than the rates at which money may be secured on public utility bonds.

That in view of the rates of interest paid for money in other lines of business, the prices at which their securities are selling, the great amount of tax free Municipal, State and Federal Government bonds on the market, the competition in the money market is such

459 that in order to attract capital to and be able to induce it to invest in the property of the Atlanta Gas Light Company it must be permitted to earn at last 8% per annum net on the present value of its property.

460 Complainants introduced an affidavit of P. S. Arkwright in brief as follows:

I am President of the Georgia Railway & Power Company and Vice President of the Atlanta Gas Light Company, have been President of the Georgia Railway and Power Company continuously since about March 1912 and have been Vice President of the Gas Company since about 1903. I am familiar with the business and the accounts of complainants through these years.

Exhibit A is a statement showing profits and losses earned and sustained by complainant in its Gas Department during 1907 to 1920 both inclusive. These statements show the gross revenues, operating expenses, taxes and the balance after taxes for each of such years; they are calculated on the basis of taking the minimum valuation of complainant's gas property as fixed by the Railroad Commission of Georgia, as of January 1, 1918, referred to in its order of August 14, 1918, when it made a minimum valuation for emergency rate purposes. This minimum valuation is adjusted for each of the years by substracting the amounts actually expended for new construction during the years prior to January 1, 1918, and adding the amounts expended for a new construction subsequent to January 1, 1918; that upon such minimum valuations so arrived at is calculated an allowance for depreciation according to the rate stated by the Commission in its order of August 14, 1918, and then applying to the valuation arrived at as above stated, for each of the years, the net earnings of the Gas Department of complainant for such years after deducting from Gross Revenues for such years the operating expenses, taxes, and the rate of depreciation as fixed by said Railroad Commission of Georgia for such years; that such statement shows the rate of return on such minimum valuation for each of such years, of the net earnings for such years, and shows the excess or deficit for each year of such earnings above or below an 8% return for such years on such minimum valuation; that for the period 1907 to 1920, both inclusive, complainant suffered a loss on this basis below an 8% return on the minimum valuation of the Railroad Commission of the aggregate sum of $1,032,772.27.

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461 *Statement Showing Amounts by Which Atlanta Gas Light Co. Has Failed to Earn, or Did Earn, 8% Return on R. R. Commission's Minimum Valuation of* $3,500,000 *(Plus Additions or Adjustments) of Property After Allowing Only* 2½% *for Depreciation for the Years* 1907 *to* 1920, *Inc.*

Account.	1907.	1908.	1909.	1910.	1911.
R. R. Commission's valuation as of Jany. 1, 1918.....	$3,500,000.00	$3,500,000.00	$3,500,000.00	$3,500,000.00	$3,500,000.00
Additions and/or adjustments	1,014,045.87	944,631.42	872,753.16	646,121.51	534,742.69
Add for Decatur Plant.....	.....	.....	.....	.....	.....
	2,485,954.13	2,555,368.58	2,627,246.84	2,853,878.49	2,965,257.31
Add for Adaptation, etc.....	248,595.41	255,536.85	262,724.68	285,387.84	296,525.73
	2,734,549.54	2,810,905.43	2,889,971.52	2,139,266.33	3,261,783.04
Add for working capital.....	100,000.00	100,000.00	115,000.00	125,000.00	135,000.00
	2,834,549.54	2,910,905.43	3,004,971.52	3,264,266.33	3,396,783.04
8% Return on above value equals	226,763.96	232,872.43	240,397.72	261,141.30	271,742.64
Gross Revenue	609,917.45	639,504.16	676,680.58	735,137.04	772,244.61
Operating Exp.	315,177.69	297,657.64	310,269.83	342,228.74	355,687.02
Net Earnings	294,739.76	341,846.52	366,410.75	392,908.30	416,557.59
Taxes	36,306.46	35,708.21	41,462.91	38,971.30	44,438.66
Bal. after Taxes.....	258,433.30	306,138.31	324,947.84	353,937.00	372,118.93

Statement, etc.—Continued.

Account.	1907.	1908.	1909.	1910.	1911.
Bal. after Taxes	258,433.30	306,138.31	324,947.84	353,937.00	372,118.93
Depreciation 2½% on R. R. Commission's minimum valuation with additions and/or adjustments	62,148.85	63,884.21	65,681.17	71,346.96	74,131.43
Balance	196,284.45	242,254.10	259,266.67	282,590.04	297,987.50
Per cent earned on R. R. commission's 1918 minimum valuation, plus additions and/or adjustments	6.92469%	8.32229%	8.62793%	8.65707%	8.77262%
Net over or under 8% return.	30,479.51	9,381.67	18,868.95	21,448.74	26,244.86

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8% Return on Railroad Commission's Minimum Valuation of $3,500,000 *(Plus Additions or Adjustments) of Property After Allowing Only* 2½% *for Depreciation for the Years* 1907 *to* 1920, *Both Inc.*

Account.	1912.	1913.	1914.	1915.	1916.
Railroad Commission's Valuation as of Jany. 1st, 1918..	$3,500,000.00	$3,500,000.00	$3,500,000.00	$3,500,000.00	$3,500,000.00
Additions and/or adjustments	388,433.57	257,394.88	205,450.07	169,137.72	104,063.33
Add for Decatur Plant.....	.....	.....	.....	.....	.....
Total physical property	$3,111,566.43	$3,242,605.12	$3,294,549.93	$3,330,862.28	$3,395,936.67
Add for adaptation, etc.....	311,156.64	324,260.51	329,454.99	333,086.23	339,593.67
	$3,422,723.07	$3,566,865.63	$3,624,004.92	$3,663,948.51	$3,735,530.34
Add for working capital.....	150,000.00	160,000.00	170,352.00	170,352.00	170,352.00
Total Gas Properties..	$3,572,723.07	$3,726,865.63	$3,794,356.92	$3,834,300.51	$3,905,882.34
8% return on above value equals	285,817.84	298,149.25	303,548.55	306,744.04	312,470.58
Gross Revenue.....	825,849.22	853,102.10	874,698.62	847,649.24	866,966.94
Operating Expenses	401,505.32	435,169.04	422,264.51	383,533.07	424,511.91
Net Earnings	424,343.90	417,933.06	452,434.11	464,116.17	442,455.03
Taxes	47,561.92	71,165.50	69,813.26	67,909.05	71,436.86
Bal. after Taxes	376,781.98	346,767.56	382,620.85	396,207.12	371,018.17

Statement, etc.—Continued.

Account.	1912.	1913.	1914.	1915.	1916.
Bal. after Taxes	376,781.98	346,767.56	382,620.85	396,207.12	371,018.17
Depreciation 2½% on R. R. Commission's minimum valuation with additions and/or adjustments.....	77,789.16	81,065.13	82,363.75	83,271.56	84,898.42
Balance	$298,992.82	265,702.43	300,257.10	312,935.56	286,119.75
Per cent earned on R. R. Commission's 1918 minimum valuation, plus additions and/or adjustments	8.36877%	7.12937%	7.91325%	8.16146%	7.32536%
Net over or under 8% return.	13,174.98	32,446.82	3,291.45	6,191.52	26,350.83

463 *Statement Showing Amounts by Which Atlanta Gas Light Co. has Failed to Earn, or Did Earn, 8% Return on Railroad Commission's Minimum Valuation of* $3,500,000 (*Plus Additions or Adjustments*) *of Property After Allowing Only 2½% for Depreciation for the Years* 1907 *to* 1920, *Both Inc.*

Account.	1917.	1918.	1919.	1920.
Railroad Commission's valuation as of Jany. 1, 1918	$3,500,000.00	$3,500,000.00	$3,500,000.00	$3,500,000.00
Additions and/or adjustments	.....	69,082.00	136,397.00	349,842.16
Add for Decatur Plant	.....	.....	.....	170,000.00
Total physical property	$3,500,000.00	3,569,082.00	3,636,397.00	4,019,842.16
Add for adaptation, etc	350,000.00	356,908.00	363,640.00	401,984.00
	3,850,000.00	3,925,990.00	4,000,037.00	4,421,826.16
Add for working capital	170,352,00	170,352.00	170,352.00	170,352.00
Total Gas Properties	4,020,352.00	4,096,342.00	4,170,389.00	4,592,178.16
8% Return on above value equals	321,628.16	327,707.43	333,631.19	367,374.25
Gross Revenue	939,297.91	1,070,463.01	1,347,223.49	1,708,661.78
Operating Expenses	648,911.93	850,287.07	966,877.45	1,585,192.66
Net Earnings	290,385.98	220,175.94	380,346.04	123,469.12
Taxes	80,280.09	72,913.04	94,423.28	83,800.95
Balance after Taxes	201,105.89	147,262.90	285,922.76	39,668.17

Statement, etc.—Continued.

Account.	1917.	1918.	1919.	1920.
Balance after Taxes	201,105.89	147,262.90	285,922.76	39,668.17
Depreciation 2½% on R. R. Commission's minimum valuation with additions and/or adjustments	87,500.00	89,227.07	90,909.95	100,496.05
Balance	$122,605.89	58,035.83	195,012.81	60,827.88
Per cent earned on Railroad Commission's 1918 minimum valuation plus additions and/or adjustments	3.04963%	1.41677%	4.67613%	Nil.
Defic-t under 8% Return	$199,022.27	269,671.60	138,618.38	428,202.13
Total defic-t for the four years ended December 31st, 1920				$1,035,514.38
Total defic-t for 14 years 1907 to 1920 both inclusive				$1,032,772.27

464 Complainants introduced an affidavit of P. S. Arkwright in brief as follows: That he is familiar with the business and the accounts of the said complainants; that he is familiar with the efforts made by the said complainants to have the rates charged in their Gas Department adjusted; that all applications for the adjustment of such rates filed by said complainants, or either of them, before the Railroad Commission of Georgia, were filed by and under the personal direction of deponent.

Attached hereto, marked Exhibit No. A, is a statement showing the losses sustained by complainant in its Gas Department during the years 1917, 1918, 1919 and 1920. This statement is made up by taking the minimum valuation fixed by the Railroad Commission of Georgia as of January 1, 1918, referred to in its order of August 14, 1918, adjusted for each year by adding the amounts actually expended for new construction during such year, and applying to such value the net earnings of the Gas Department of complainant for such year after deducting from gross revenues annual operating expenses, taxes, and the rate of depreciation as fixed by said Railroad Commission of Georgia.

Said Commission holds that complainant is entitled to earn at least 6% on at least this minimum value fixed by the Commission, and that it ought to be permitted to charge rates which would allow it to earn at least this rate of return. The statement shows that complainant suffered a loss on this basis for the four years 1917 to 1920 of $1,-125,514.38, and that for the year 1920, under the rates fixed by said Commission, complainant not only did not earn any return whatever on any value whatever from its Gas Department, but that it actually failed under the rates it was compelled to charge to earn sufficient to pay its operating expenses and taxes and provide for the renewal of its property worn out in the service. That in addition to furnishing gas service and devoting its property to such service without any return whatever, it actually suffered an out-of-pocket loss during the year 1920 the sum of $60,827.88.

465 Mr. H. E. Riggs, of Ann Arbor, Michigan, Professor of Engineering, and Head of the Engineering Department of the University of Michigan, was employed by the Railroad Commission of Georgia, in the early part of the year 1921, to make an examination of all available data as to the property of the Georgia Railway and Power Company, used in the manufacture of gas in Atlanta and vicinity, and to report to it his opinion as to the minimum valuation figure which should be used as a basis for rate-making, the probable fair value of the property, and such facts as to operating costs, cost of construction, and general condition of maintenance of the property, as the Railroad Commission should have before it in reaching a decision on gas rates. Mr. Riggs, in his report, examined into the past earnings of complainant's gas department and reported, among other things, the earnings applicable to a return on investment for the years 1917 to 1920, inclusive. He based these figures upon the minimum valuation fixed by said Commission on August 14, 1918, of complainant's gas property, and allowed for the year

1917 as a fair return 7½% on such valuation, and for each of th years 1918, 1919, and 1920 a return of 8% on such minimum valu tion.

Attached hereto, marked Exhibit No. B, is an extract from M Riggs' report showing the results on this basis for the years 1917 t 1920, both inclusive. This statement of Mr. Riggs shows that thi complainant in its Gas Department suffered a loss during the yea 1917 to 1920, both inclusive, of $972,804. That it suffered a loss i each one of the years 1917, 1918, 1919, and 1920, and that in th year 1920 it not only earned no return whatever on any valuatio of its gas property, but that in supplying Gas Service it not only de voted its property to the service without any return, but actually su tained an out-of-pocket loss in order to supply the service, amountin to $57,494 more than the revenues it received.

466 Complainant has not the power to itself fix the rates charge by it for gas service, but is compelled to supply service at th rates fixed by the State of Georgia, acting through said Honorabl Commission.

Following the declaration of war by the United States in 1917, th costs of labor and materials entering into the making and supplyin of gas were materially increased. So much so that the rates then b ing charged for gas were not sufficient to pay the cost of making an supplying the gas. While complainant anticipated that these cos would so increase as to make the rates then being charged for gas in adequate, it was familiar with the practice of said Commission to re quire that the public utility company should through actual experi ence show a history of losses under increased prices for materials an labor before an application to adjust the rates to meet these cost would be entertained by the Commission.

In one order of said Commission of March 10, 1921, declining t reopen the previous order of February 10, 1921, fixing gas rates fo this complainant, said Commission declared this policy as follows:

"The majority of the Commission does not believe that they (ga rates) can be based upon a guess, or a theory, or a hope as to wha they (conditions) will be six months or a year in the future."

The same principle was announced by the Chairman of said Com mission in the Southern Bell Telephone case on Feby. 4th, 1921, a follows:

"The argument for the increased revenue asked is to an extent based upon the estimates of increased wage and other expenses in 1921. Until these increases are actually made I question the policy of anticipating them by increased rates."

Likewise, the same policy was announced by Commission- Boifeui let in his opinion in the same case, as follows:

"I do not believe that an increase of rates should be based upon an anticipated increase in expenses during the current year."

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467 Therefore, while suffering a loss on the rates then authorized by the Commission, complainant had to continue to suffer such loss before it could, in accordance with the practices and policies of said Commission, file an application for relief in the nature of increased rates to meet such increased costs.

It did file an emergency application on April 16th, 1918, which was granted, in part, on August 14th, 1918, and became applicable on or about November 1, 1918.

It filed a similar application for relief on April 21, 1920, which was granted, in part, on September 22, 1920, effective October 1, 1920.

It filed a still further emergency application for relief on November 28, 1920, which was granted, in part, on Feby. 10th, 1921, and became effective about March 1, 1921.

The relief granted by this last order of Feby. 10th, 1921, was in large part withdrawn by order of the Commission on its own initiative, without notice and without hearing on May 28, 1921, reducing the rates to become effective June 1, 1921.

Under the rates fixed by said Commission this complainant suffered a loss of at least $1,025,514.38. The users of the gas service of complainant were saved an equal amount of money; that is to say, they did not pay the cost of the service by this amount of money.

The Public is the same and the persons so receiving such benefits were substantially the same persons now using the gas service supplied by complainant. On account of this loss complainant has accumulated a defic-t and a very large floating indebtedness. The revenues received by it now and in the future must be applied toward the payment of this indebtedness and making good this defic-t so suffered, and are not available as a return on the value of the property now being used in the gas service.

Amortizing this loss over a period of four years would make an annual charge against earnings of $256,378, or a monthly charge of $21,365.

468 If the loss should be taken to be the loss as stated by Mr. Riggs, of $972,804, this amount should be amortized over a period of four years and would result in a charge against earnings of $243,201 per year, or $20,267 per month.

CLOSE IN CENTER

Statement Showing Amounts by Which Atlanta Gas Light Co. Has Failed to Earn —% Return on R. R. Commission's Minimum Valuation of $3,500,000.00 *(Plus Additions) of Property After Allowing Only* 2½% *for Depreciation for Years* 1917, 1918, 1919, *and* 1920.

	1917.	1918.	1919.	1920.
	1917.	1918.	1919.	1920.
R. R. Commission's 1918 Valuation (Plus additions)	$3,500,000.00	$3,500,000.00	$3,569,082.00	$3,636,398.00
Additions to property	.....	69,082.00	67,315.00	213,444.16
Commission's Valuation (plus additions)	3,500,000.00	3,569,082.00	3,636,397.00	3,849,842.16
Add for Decatur Plant	.....	.....	.....	170,000.00
Total Physical Property	3,500,000.00	3,569,082.00	3,636,397.00	4,019,842.16
Add for adaptation, Etc	350,000.00	356,908.00	363,640.00	401,984.00
	3,850,000.00	3,925,990.00	4,000,037.00	4,421,826.16
Add for working capital	170,352.00	170,352.00	170,352.00	170,352.00
Total Gas Properties	4,020,352.00	4,096,342.00	4,170,389.00	4,592,178.16
8% Return on above value equals	321,628.16	327,707.43	333,631.19	367,374.25
Gross Revenue	939,297.91	1,070,463.01	1,347,223.49	1,708,661.78
Operating Expenses	648,911.93	850,287.07	966,877.45	1,585,192.66
Net Earnings	$290,385.98	220,175.94	380,346.04	123,469.12

Taxes	80,280.09	72,913.04	94,423.28	83,800.95
Balance after Taxes	210,105.89	147,262.90	285,922.76	39,668.17
Depreciation: 2½% on R. R. Commission's Minimum Valuation plus additions	87,500.00	89,227.07	90,909.95	100,496.05
Balance	132,605.89	58,035.83	195,012.81	60,827.88
Per cent earned on Railroad Commission's 1918 minimum valuation, plus additions	3.29%	1.41%	4.67%	Nil.
Defic-t under 8% Return	189,022.27	269,671.60	138,618.38	428,202.13
Total defic-t for four years ended Dec. 31, 1920				1,025,514.38

470 EXHIBIT No. B.

Georgia Railway & Power Company.

Gas Department.

Revenues, Expenses, Taxes, Reserves, and Gain or Loss, 4 Year Period 1917 to 1920, Inclusive, Based upon Georgia Railroad Commission Valuation of 1921, Adjusted for Former Years.

Copied from Mr. Riggs' Report.

	1917.	1918.	1919.	1920.
Gross Revenue	939,298	1,070,463	1,347,223	1,708,662
Operating expenses	648,912	850,287	966,877	1,585,193
Operating Revenue	290,386	220,176	380,346	123,469
Taxes	80,280	72,913	94,423	83,901
Net Income	210,106	147,263	285,922	39,568
Reserve for replacements	86,199	88,363	90,068	97,162
Net Earnings	123,907	58,900	195,854	54,494
Fair Return	297,234	324,668	330,669	341,400
Gain or Loss (Deficit under Fair Return)	173,327	265,768	134,815	398,894
Total deficit for last four years				972,804

471 Complainant introduced an affidavit of P. S. Arkwright in brief as follows:

In addition to being President of the Georgia Railway and Power Company and Vice President of the Gas Company, he was President of the Georgia Railway & Electric Company from about Jany. 1902, to the time its property was turned over under the lease to the Georgia Railway & Power Company on or about March 18th, 1912; that he is familiar with the property and business of the Atlanta Gas Light Company, with its construction expenditures and the costs incurred by such company from time to time in newly acquired or newly constructed property; that he is familiar with the records and accounts of the Atlanta Gas Light Company and the Georgia Railway & Power Company; that no complete records are in existence showing the actual costs or the actual original cost of construction of all of the physical properties owned by the Atlanta Gas Light Company; that these records do show the original cost of construction of all of the properties acquired in recent years; that the property of the Atlanta Gas Light Company was valued as of January 1, 1912; that adding to such valuation the amounts actually expended for permanent improvements to the property of the company during the years 1912 and 1913, the value of the fixed physical property or plant of the Atlanta Gas Light Company as it existed on January 1, 1914, on the prices prevailing in the years 1912, 1913, and 1914, was $3,675,441.87; that from deponent's knowledge of the business, his experience with the costs of building the property,

of the trend of the prices over a number of years, deponent says that the said amount of $3,675,441.87 represents the approximate actual original cost of construction of the fixed physical property or plant of the Atlanta Gas Light Company as it existed on January 1, 1914; that the present cost of construction, as compared with the original cost of construction as of Jany. 1, 1914, would
472 be about 70% in excess of the value or cost as of Jany. 1, 1914, that is to say, that the present cost of construction of the fixed physical property or plant of the Atlanta Gas Light Company as existing January 1, 1914, would be approximately $6,248,-251.17. In other words, that it would cost, at the present time, $2,572,809.30, more to construct the fixed physical property of Atlanta Gas Light Company in existence on Jany. 1, 1914, than it would have cost to construct it during the years 1912, 1913 and 1914, or than the approximate original cost of construction; that from January 1st, 1914, to November 30th, 1921, there has been expended in permanent improvements to the fixed physical property of the Atlanta Gas Light Company the sum of $1,024,477.07.

Deponent further says that the statement hereto attached, marked exhibit A, and hereby referred to and made a part of this affidavit, is true and correct, and shows the value of the gas property of the complainants in this case used and useful in the service of supplying gas on the basis of the approximate actual original cost of construction adjusted so as to be approximately on the basis of the present cost of construction, and adding thereto the amojnts expended in permanent improvements from Jany. 1st, 1914, to November 30, 1921, and depreciating the whole on account of its age and condition, and adding thereto the necessary amount of the other items of value as shown on such statement.

473 EXHIBIT "A" No. 1.

Georgia Railway & Power Company.

Historic Value, i. e., W. A. Baehr's 1912 Valuation of Physical Property with Additions to 12/31/13, Appreciated 70%, Plus Additions to November 30, 1921, and the Total Depreciated to Normal Present Value, with Working Capital and Going Concern Value, etc., Added.

Account.		Amount.
Physical property at Jany. 1, 1914	(1)	$3,675,44-.87
Appreciate at 70%	(2)	2,572,809.30
Additions to physical property from Jan. 1, 1914 to Nov. 30th, 1921	(3)	1,024,477.07
Total physical property New	(4)	$7,272,728.24
Total physical property depreciated	(5)	6,443,637.19
Working capital	(6)	425,000.00
Going concern value	(7)	700,000.00
	(8)	$7,568,637.19
Franchise	(9)	1,000,000.00
Cost of financing	(10)	515,490.97
Total	(11)	9,084,128.16

474 Complainants introduced another affidavit of P. S. Arkright in brief as follows:

That he was present at the hearing before the Railroad Commission of Georgia on October 31 and November 1st, 1921, on the Rule Nisi issued by the said Commission in the matter of the proposed revision of the gas rates to be charged by Georgia Railway & Power Company in the City of Atlanta and vicinity; that he was present at all times during such hearing and is familiar with the testimony delivered and the exhibits filed at such hearing; that he is particularly familiar with the testimony of A. J. Luick and the exhibits filed by said A. J. Luick; that he examined such exhibits prior to their being filed as a part of the testimony of the said A. J. Luick at such hearing; that there were filed with such Railroad Commission by the said A. J. Luick at the hearing of the said case six volumes, comprising a detailed inventory of the items of physical property belonging to the Atlanta Gas Light Company, and leased to Georgia Railway & Power Company, and of the Gas Department of Georgia Railway & Power Company as such property existed on January 1, 1919, being the property on that date used and useful by the complainants in this case in the manufacture and supply of gas in the City of Atlanta and vicinity; that such inventory contained a detailed description of the

land and all the items of physical property used in the making and supplying of gas by such complainants, as such property existed on January 1, 1919. The said A. J. Luick testified that such inventory had been made under his supervision and direction, and that the same was accurate; that in order to bring such inventory down to the date of the hearing, September 30, 1921, the said A. J. Luick had taken the construction accounts of the Georgia Railway and Power Company and Atlanta Gas Light Company in their Gas Department,

475 Eliminating from his calculation all items owned on January 1, 1919, which had subsequently been abandoned, and adding thereto all items which had been acquired since January 1, 1919, to the date of the hearing, and which were in use at the date of the hearing; that he had thereupon valued all of the said items of physical property, both that owned on January 1, 1919, and still owned on September 30, 1921, and as well, the items which had been acquired subsequent to January 1, 1919, and owned and in use on September 30, 1921; that in valuing the property added and acquired since January 1, 1919, he did not use the book costs as shown on the books of complainant, but that he used the value of such property as of September 30, 1921, such value being in each case less than the cost of acquiring such items as shown on the books of complainant; that his valuation report, as filed at the said hearing, and being identified as Exhibit No. 26, at said hearing before such Commission, represented the value as appraised by him of the physical properties used and useful in the Gas Department of the Georgia Railway & Power Company, as such physical properties existed and were in use on September 30, 1921; that he checked the items shown on the construction statements of complainants of property added subsequent to January 1, 1919, by examining a number of such items on the ground, and made sure that the items shown on such construction statements had actually been added and were in existence on September 30, 1921; that the value as given by him in the valuation report hereinbefore referred to was the value of the items of the physical property used and useful by complainant on September 30, 1921, and that such valuation included only the items of physical property used and useful by complainant on September 30, 1921, and were the items as disclosed by the inventory filed by him as a part of his testimony, with corrections for items added or subtracted from January 1, 1919 to September 30, 1921.

476 Complainants introduced another affidavit of P. S. Arkwright, in brief as follows:

That the Federal Reserve Bank of the Atlanta District has refused to rediscount for Atlanta Banks any notes made by the Georgia Railway and Power Company; that on one occasion one of the Officers of the Federal Reserve Bank of Atlanta called on deponent at the instance of one of the Atlanta Banks, which Bank held notes and contemplated taking other notes of the Georgia Railway and Power Comapny; that such officer discussed with deponent the matter of rediscounting by the Federal Reserve Bank for the Atlanta Banks

the notes of the Georgia Railway and Power Company; that such officer examined a statement of the Georgia Railway and Power Company; that such officer stated to deponent that under the rules of the Federal Reserve Bank they could not accept the notes of the Georgia Railway and Power Company; that the statement did not comply with the requirements of the Federal Reserve Bank and that they would not be able to rediscount the notes of the Georgia Railway and Power Company for Atlanta Banks.

477 Complainants introduced an affidavit of G. W. Brine in brief as follows:

That he is particularly in executive charge of the financial and accounting departments of the company;

That attached hereto, marked Exhibit A, and hereby referred to and made a part of this affidavit, is a statement of the operating revenues and expenses of the Gas Department of the Georgia Railway & Power Company for the five months July to November, 1921, inclusive; that this is accurate and that it truthfully represents the gross revenues, operating expenses, taxes, and net operating revenue of the Gas Department of the Georgia Railway & Power Company for the said five months period; that the gross revenue shown on the statement for the period has been adjusted from that shown on the records of the company by deducting ten million cubic feet of gas from the gas output for the said five months sales period, as shown on the books of the company; that the sales period does not represent the calendar month, but represents the meter reading period; that in July sales, for instance, there is included all gas consumption as shown on the meters when read in July from the period of their previous reading; that the rate of gas in Atlanta was changed, effective June 1, 1921, by reducing the maximum net rate from $1.90 to $1.65; that in order to put into effect this change in rate it was necessary to change the mechanical gears in all of the prepay meters; that these gear changes were made by the regular prepay meter readers; that this additional work caused a delay in the regular time of reading and collecting the money from the prepay meters, so that in the July and August sales, as recorded on the books, there were included ten million cubic feet of gas, and the earnings therefrom more than would have been included if these readings had covered a period of approximately thirty days; that the net operating revenue for such period is shown on the said statement at the rate fixed by the Commission in its order of May, 1921, and made

effective from and after June 1, 1921, the maximum net
478 rate under which schedule in Atlanta was $1.65, and outside of Atlanta $1.75; that the net revenue is likewise shown on such statement at what it would have been if the rates prescribed by the Railroad Commission of Georgia in its order of December 30, 1921, had prevailed during such five months period; that the net operating revenue for such period under the rates which prevailed during such period was $221,974.93, without any allowance for depreciation or for a return on investment; that if the rates prescribed by the Railroad Commission in its order of December 30, 1921, had

prevailed during such period the net operating revenue would have been $172,074.15, without any allowance for depreciation or return on investment.

Deponent further says that the statement hereto attached, marked Exhibit B, and hereby referred to and made a part of this affidavit, is a statement of the gross revenues, operating expenses, net operating revenue for a twelve months period ended December 31, 1921, on the basis of the earnings of the five months period July to November, 1921. The net earnings are without any allowance for depreciation or for return on investment, and are shown as what they would have been under the schedule of rates fixed by the Commission in its order of May, 1921, and also what they would have been at the schedule of rates fixed by the order of the Railroad Commission of December 30, 1921; that the said statement is true and correct and the figures therein are accurate.

479 Georgia Railway and Power Company.

Gas Department.

Operating Revenue and Expenses.

Results for Twelve months ended December 31, 1921, Based on the Five Months as Shown in Preceding Statement.

Revenue from the Sale of Gas	1,971,040.80
Revenue from Other Sources	20,975.30
Total Revenue	1,992,016.10
Expenses:	
Manufacturing	864,405.36
Distribution	197,076.96
Commercial Expense	98,977.20
Expenses	138,283.20
New Business	19,791 48
Taxes	127,670.76
Total	$1,446,204.96
Maintenance Reserve	13,071.24
Total Expenses Including Taxes	$1,459,276.20
Net Operating Revenue under the $1.75 and $1.65 scale of rates (average rate $1.6458)	$532,739.90
Net Operating Revenue under the $1.65 and $1.55 scale of rates (average rate $1.5458)	$412,977.96

NOTE.—No depreciation included in above figures.

480 Georgia Railway and Power Company.

Gas Department.

Operating Revenue and Expenses.

Results for Five Months, July-November, 1921, Inclusive, Figuring the Cubic Feet of Sales on the Basis of the $1.75 and $1.65 Scale of Rates, the Average Rate under These Rates Being $1.6458.

Cubic feet of sales during above period used by R. R. Commission	509,007,80
Cubic feet of sales during above period used in this statement	499,007,80
Difference	10,000,00

This difference of 10,000,000 cu. ft. is to adjust due to the fac that changing gears of prepay meters resulted in throwing into th above five months' period 10,000,000 cubic feet which otherwis would have been in previous months.

Revenue from the Sale of Gas	821,267.0
Revenue from other Sources	8,739.7
Total Revenue	830,006.7
Expenses:	
Manufacturing	360,168.9
Distribution	82,115.4
Commercial Expense	41,240.4
Expenses	57,618.0
New Business	8,246.4
Taxes	53,196.1
Total	602,585.4
Maintenance	5,446.3
Total Expenses including taxes	$608,031.8
New Operating Revenue	$221,974.9
The Net Operating Revenue under the $1.65 and $1.55 scale of rates (average under this scale $1.5458) would have been	$172,074.1

NOTE.—No depreciation Included in above figures.

181 Complainants introduced an affidavit of G. W. Brine in brief as follows:

That he is Vice-President of the Georgia Railway and Power Company, and President of the Atlanta Gas Light Company, the complainants in the above stated case; and that he has held such official position with above named companies, during the period under review; that he is the officer of the companies in direct charge of the accounts, books, vouchers, etc., of complainants.

Attached hereto, marked Exhibit A, is a statement of six sheets of paper, showing the consumption of gas, in thousand cu. ft., for the period shown, beginning with October 1st, 1917; that said sheets show the consumption during the period when the $1.15 rate was in effect. that $1.45 rate was in effect; that $1.90 rate was in effect and the period covered by the $1.65 rate from June 1st, to December 1st, 1921—each compared with the consumption of gas, during the same preceding months of preceding years; that for the period January 1st to November 30th, 1919 the gas consumption on basis of the $1.15 rate equalled 1,088,589.000 cu. ft.; that for the same 11 months during 1921, during which said time higher rates were in effect the gas consumption equalled 1,199,868,000 cu. ft.

That the total number of meters in service on November 30th, 1919 was 30,231; that the total number of meters in Service on November 30th, 1921, was 32,966.

That said Exhibit A shows that correspondingly the gas consumption decreased less on the increased rate of $1.90 than it did when the rate was reduced to $1.65; and affiant states that in his opinion, the decrease in gas consumption at this particular

182 time, is due entirely to the general business depression.

Affiant states that, due to stability of gas consumption generally, in his opinion, the test period selected and used by the Commission, July-November 1921, would be a fair period upon which to test the sufficiency or insufficiency of any rate schedule, applied to the business of complainants.

183 Georgia Railway and Power Company.

Gas Department.

Consumption, in Thousand Cubic Feet, for the Periods.

October 1st, 1917 to October 1st, 1918	1,073,585
October 1st, 1918 to October 1st, 1919	1,165,636
October 1st, 1919 to October 1st, 1920	1,352,114

Georgia Railway and Power Company.

Gas Department.

Consumption, in Thousand Cubic Feet, for the Periods.

October 1st, 1919 to March 1st, 1920	586,102
October 1st, 1920 to March 1st, 1921	617,978

Georgia Railway and Power Company.

Gas Department.

Consumption, in Thousand Cubic Feet, for the Periods.

March 1st, 1920 to June 1st, 1920	360,468
March 1st, 1921 to June 1st, 1921	344,167

484 Georgia Railway and Power Company.

Gas Department.

Consumption, in Thousand Cubic Feet, for the Periods.

June 1st, 1920 to December 1st, 1920	639,07
June 1st, 1921 to December 1st, 1921	602,82

Georgia Railway and Power Company.

Gas Department.

Consumption, in Thousand Cubic Feet, for Eleven Months Ended.

November 30, 1918	985,752
November 30, 1919	1,088,589
November 30, 1920	1,256,359
November 30, 1921	1,199,868

Georgia Railway and Power Company.

Gas Department.

Total Meters in Service.

November 30, 1918	27,72
November 30, 1919	30,23
November 30, 1920	32,54
November 30, 1921	32,96

485 Complainants introduced an affidavit of I. S. MITCHELL, JR., in brief as follows:

I am Treasurer of the Georgia Railway and Power Company. Affiant states that as Treasurer of the Company he has direct supervision and control over the prepay meters of the gas department. That a prepay meter used for measuring gas service furnished by the Georgia Railway and Power Company is of such necessary mechanical design, that whenever a change is made in the rate to be charged,

for gas, per 1,000 cu. ft., mechanical gears in each individual meter has to be changed, in order that the correct amount of gas based on the rate to be charged, may be permitted to flow thru such meter.

That due to changes in the gas rates in Atlanta and vicinity, during the year 1921, it was necessary to, and the Company actually did substitute new gears in each prepay meter used in the public service.

That the gear wheels or price wheels have to be manufactured specially, upon order, by the manufacturers of the specific meters in use. That all of such gear-wheels have to be manufactured at meter factories in Philadelphia, Penna.

That it usually takes not less than 10 days to receive the first consignment of such gear wheels, after the order has been placed by the local company; that for every change ordered by the Railroad Commission, prior to the order involved in this case, the Georgia Rwy. and Power Company has placed telegraphic order for the required number of the gear wheels with the meter manufacturers.

That all during the year 1921 the Georgia Rwy. and Power Company had in use approximately 13,000 prepay gas meters; that to make changes in the mechanical part of the meter heretofore described, costs the company not less than six thousand dollars for each general change; that two changes were so made during 1921,
486 which said two changes cost the company not less than $12,000.00.

That by the use of utmost diligence and care, the time consumed in having meters adjusters re-gear the prepay meters is not less than two months, or 60 days, or on an average 6,500 changes per month.

That to make the change in gear-wheels or price wheels in prepay meters in use December 31st, 1921, (12,942 in number) would cost not less than $6,000, and would consume not less than 60 days by the use of utmost diligence and care on the part of the company.

487 Complainants introduced an affidavit of F. A. Brine in brief as follows:

That he is, and for a number of years past has been Assistant Auditor of Georgia Railway and Power Company and the Atlanta Gas Light Company, and prior to the lease of the Georgia Railway & Electric Company was for a number of years Assistant Auditor of the Georgia Railway & Electric Company; that he is familiar with the amount and market value of the bonds and stock of the Atlanta Gas Light Company, the Georgia Railway & Electric Company, and the Georgia Railway & Power Company; that the outstanding bonds of the Atlanta Gas Light Company on January 1, 1922, consisted of First Mortgage bonds of the par value of $1,150,000, with a market value of 99% of par, and of Refunding and Improvement Mortgage bonds of the par value of $650,000.00, with a market value of 100% of par; that the amount of the stock of the Atlanta Gas Light Company outstanding on January 1, 1922, and on September 30, 1921, was Preferred stock of the par value of $600,000, and Common stock of the par value of $1,014,625; that the stocks of

the Atlanta Gas Light Company are not traded on in any market, and have not been traded on in any market for a great number of years; that such stock is not bought or sold, and has not been bought or sold for a great number of years; that the entire capital stock of the Atlanta Gas Light Company is owned by Georgia Railway & Electric Company, and has been owned by Georgia Railway & Electric Company since about June, 1903; that the property of the Georgia Railway & Electric Company was leased to the Georgia Railway & Power Company as of the first day of Jnauary, 1912; that such lease passed to the Georgia Railway & Power Company, Lessee, the voting rights upon and all income derived from the outstanding capital stock of the Atlanta Gas Light Company; That the property of the Atlanta Gas Light Company has been leased to the Georgia Railway & Electric Company, and by succession, to the Georgia Railway & Power Company for a term of Nine Hundred and Ninety-nine (999) Years from January 1, 1912; that for these reasons there is no trade in or market quotations upon, or market value of
488 the stock of the Atlanta Gas Light Company;

That the amount and market value of the bonds and stocks of Georgia Railway & Electric Company, outstanding on January 1, 1922, were as follows:

Refunding and Improvement Mortgage Bonds to the amount of $5,771,000, with a market value of 82% of par;

Atlanta Street Railway First Mortgage Bonds to the amount of $225,000, with a market value of 100% of par;

Atlanta Consolidated Street Railway First Mortgage Bonds to the amount of $1,800,000, with a market value of 93½% of par;

Georgia Electric Light First Mortgage bonds to the amount of $1,350,000, with a market value of 92% of par;

Georgia Railway & Electric Company First Consolidated Mortgage bonds to the amount of $5,560,000, with a market value of 90¾% of par;

Preferred Capital Stock to the amount of $2,400,000, with a market value of 68% of par;

Common Capital Stock to the amount of $8,514,600, with a market value of 100% of par;

That the amount and market value of the bonds and stocks of the Georgia Railway & Power Company, outstanding on January 1, 1922, are as follows:

General Mortgage Bonds to the amount of $4,000,000, with a market value of 104% of par;

First and Refunding Mortgage bonds to the amount of $12,519,000 with a market value of 86% of par. (There are $4,000,000 additional of these bonds, but they are pledged as collateral for the General Mortgage bonds.)

Atlanta Water and Electric Power Company Mortgage bonds to the amount of $1,400,000, with a market value of 86% of par;

First Preferred Stock to the amount of $2,000,000, with a market value of 85% of par;

Second Preferred stock to the amount of $10,000,000, with a market value of 21% of par;
Common stock to the amount of $15,000,000, with a market value of 17% of par;

Deponent further says that the Georgia Railway & Electric Company owns street, suburban, and interurban railways, electric light and power plants, transmission and distribution systems,
489 steam heating plants and systems, office buildings, stations, and miscellaneous properties, in addition to the stock and lease-hold interests of the Atlanta Gas Light Company; that it is impossible to determine the proportionate part of the market value of the outstanding securities of the Georgia Railway & Electric Company, representing or attributable to the market value of the stocks of the Atlanta Gas Light Company, owned by it.
Deponent further says that the Georgia Railway & Power Company owns and operates hydro-electric plants, electric transmission and distribution lines, stations, steam electric generating stations, electric railways, undeveloped water power sites, owns lease-hold interest in and operates the properties of the Georgia Railway & Electric Company and the Atlanta Gas Light Company; that there is no way to separate the market value of its interest in the stocks and lease-hold of the Atlanta Gas Light Company, and that it is impossible to determine the market value of its interest in the securities and lease-hold of the Atlanta Gas Light Company from the market value of the securities of the Georgia Railway & Power Company.

490 Complainant introduced an affidavit of Robert F. Maddox, in brief as follows:

I am engaged in the banking business in the city of Atlanta and have been so engaged for a number of years. I am familiar with the prices of various securities and the rates of interest or dividends paid on such securities, and with the earnings or yield of money invested in various lines of business and with the rates of interest being paid on tax free municipal, State and Federal Government Bonds; that it is my opinion considering all the relevant facts and the earnings of money in all lines of business, their rates of interest and the price of their securities, and the rate of return on the value of their property, that a return of at least 8 per cent. would be necessary to induce the investment of capital in the business of the Atlanta Gas Light Company of Atlanta, Georgia.

Also an affidavit of Henry W. Davis to the same effect.
Also an affidavit of T. C. Erwin to the same effect.
Also an affidavit of H. L. Morris to the same effect.
Also an affidavit of John B. Wheatley to the same effect.

491 Defendants introduced an affidavit of C. M. Candler i brief as follows:

Attached is a correct copy of a coal contract held by complainant with Randall Bros., Atlanta, under which it is now securing coal I am informed the freight rate on coal from Low, Ky., to Atlanta i $2.565 per ton and that it would appear from the contract that Eg Coal for use in gas manufacturing costs complainant $5.365 per to f. o. b. Atlanta.

I also attach correct copy of Exhibit 22 filed by P. S. Arkwright President of complainant, purporting to show cost prices of gas coal and gas oil used by complainant from 1913 to 1920, inclusive, and by months in 1921 from January to August, 1921.

492 *Coal Contract.*

Agreement entered into this 15th day of August, 1921, between Ran dall Brothers, Inc., of the County of Fulton, State of Georgia hereinafter referred to as Seller, and Georgia Railway & Powe Co., of Atlanta, Georgia, hereinafter referred to as Buyer.

The Seller hereby agrees to sell and deliver and the Buyer hereby agrees to purchase and receive, between the 1st day of September 1921, and the 31st day of March, 1922, the quantity and kind of coal and at the price hereinafter stated upon the terms and conditions herein contained, to wit:

Quantity: Four Hundred and Ten cars Creech Coal, from Creech Coal Co., mine, located at Low, Kentucky.

Rate of shipment (approximately): During September, 1921, 25 cars Egg Coal, and 25 cars Nut and Slack Coal; during October, November and December, 1921, and January, February and March, 1922, 25 cars per month of Egg Coal, and 35 cars per month of Nut and Slack Coal.

Description.

Egg Coal.

Proximate Analysis.

Moisture 2.20% Fixed Carbon 53.97% Sulphur 0.86%.
Volatile Matter 39.47% Ash 3.50%.

Nut and Slack

Proximate Analysis.

Moisture 3.20% B. T. U. 14235 Sulphur .67%.
Dry Ash 4.13%.

Price: September, Egg Coal @ $2.65 per ton (2,000 lbs.).
" Nut and Slack @ $1.55 per ton (2,000 lbs.).
October to March, incl., Egg Coal @ $2.80 per ton (2,000 lbs.).
October to March, incl., Nut and Slack @ $1.65 per ton (2,000 lbs.).

Point of delivery: f. o. b. cars mines.
To be shipped to: Georgia Railway & Power Company (Nut and Slack).
Atlanta Gas Light Company (Egg Coal).
Destination: Atlanta, Georgia.
Routing: L. & N. Railroad (Nut and Slack).
L. & N. Railroad for Southern Delivery (Egg Coal).
Kind of cars preferred: Drop bottom.

Terms and Conditions.

1. Invoice shall be paid on or before the 20th day of each month for all coal received during the preceding calendar month. Non-compliance with said terms of payment shall give the Seller the right to suspend further shipments until all previous shipments are paid for, and if in the judgment of the Seller the financial responsibility of the Buyer shall at any time become impaired and written notice thereof be given by the Seller to the Buyer, the Seller shall have the right to suspend further shipments until adequate security for payment hereunder is furnished by the Buyer. If such security is not furnished within thirty days of such notice, the Seller shall have the right to cancel this agreement.

493 2. All settlements shall be governed by the actual railroad weights ascertained at the usual points at which railroad shipments from the mine or mines producing the coal shipped hereunder are weighed.

3. Strikes, fires or accidents at the mine or mines where the coal said hereunder is produced, embargoes, shortage of car supply or other similar occurrences beyond the control of the operator of such mine or mines which prevent or interrupt the shipment of such coal, shall excuse Seller's failure to ship hereunder during the continuance of such occurrence, provided

(*a*) The Seller is the owner or exclusive sales agent of the mine or mines at which the coal said hereunder is produced, or prior to or simultaneously with the execution of this agreement has entered into a written contract for the purchase of a sufficient quantity of coal from such mine or mines to fulfill the obligations of the Seller under this agreement;

(*b*) The name of the owners and location of such mine or mines is stated in this agreement;

(*c*) The Seller gives the Buyer written notice within five days after such occurrence of the exact nature, extent, and probable duration thereof with sufficient detail to enable the Buyer to verify same;

(*d*) The total available tonnage of said mine or mines during prevention or interruption of shipments as aforesaid is applied pro rata on all contracts then in force or any renewals thereof for the

output of such mine or mines exclusive of contracts or sales made after such occurrence;

(e) Shortage of car supply shall not excuse failure to ship hereunder if at the time of such failure there are in force contracts for the sale of more than the rated output of such mine or mines based on the car rating given such mine or mines at the date of this agreement by the railroads on which the same are located.

4. In case of strikes, fires, accidents or causes beyond the control of the Buyer which wholly or partially stop the works of the Buyer, shipments contracted for shall be suspended or partially suspended as the case may require, upon written or telegraphic notice to the Seller.

5. If the Seller shall fail to ship or the Buyer shall fail to accept the monthly shipments herein provided for and shall be excused for such failure under Articles 3 and 4 hereof, the other party at any time after expiration of the first three months of the contract period may, by written notice to the party who has so failed to ship or accept, reduce the monthly tonnage thereafter to be shipped and accepted hereunder to an amount equal to the average of the monthly shipments for the three months preceding such notice.

6. The purchase price of the coal specified herein is based upon present agreements with mine employees as to wages, and any increase or decrease in the cost of production of the coal shipped hereunder caused by changes in such wage agreements or by the imposition by State or Federal Statute of a direct tax on coal or the mining thereof or subsequent changes in the rate of such tax shall correspondingly increase or decrease said price on any tonnage thereafter shipped hereunder and affected thereby.

7. The coal covered by this contract is to be used only in the plant or plants of the Buyer and is not to be sold or delivered by the Buyer to other purposes without the consent of the Seller.

494 8. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may hereafter occur.

9. Notice sent by telegram or registered mail, addressed to the party to whom such notice is given at the address of such party stated in this agreement, shall be deemed sufficient written notice in any case arising under this agreement.

10. No understandings, agreements or trade customs not expressly stated herein shall be binding on the parties in the interpretation or fulfillment hereof unless such understandings, agreements or trade customs are reduced to writing and signed by the respective parties.

11. The analysis of the coals as shown on the first page of this agreement is a representative sample of both grades of coals received from the Creech Mine during the year 1921. If at any time during

the life of this contract the quality of the coal received is inferior to any reasonable extent as shown by analysis on being compared with the analysis of the coals above mentioned, the Buyer shall have the privilege of cancelling this agreement.

12. This contract is made subject to the approval in writing of an executive officer of Randall Brothers, Inc., and when thus approved is not subject to countermand or change in whole or in part, except by mutual consent in writing, and then only to the extent thus expressly agreed upon,—each party acknowledging the receipt of a copy of same.

In witness whereof, the parties hereto have caused this agreement to be executed in duplicate by their respective officers duly authorized the day and year first above written.

RANDALL BROTHERS, INC.,
By J. J. TAYLOR,
Salesman.
RANDALL BROTHERS, INC.,
By W. L. RANDALL,
President.

Accepted:
GEORGIA RAILWAY & POWER CO.,
Buyer,
By P. S. ARKWRIGHT,
President

Approved this 29 day of Aug. 1921.

495 Georgia Railway and Power Company.

Gas Department.

Cost of Fuel.

	1913.	1914.	1915.	1916.	1917.	1918.	1919.	1920.
Gas Coal per Ton.....	2.5823	2.5613	2.5479	2.6802	4.5495	5.0091	4.6041	6.6079
Gas Oil, per gallon.....	.058125	.05847	.04758	.05337	.07499	.09561	.08321	.11143

Year 1921.

	Jany.	Feby.	March.	April.	May.	June.	July.	Aug.	8 months.
Gas Coal, per ton.....	8.2143	7.088	6.1617	5.8238	5.636	5.65	5.595	5.5114	6.28
Gas Oil, per gal.....	.12576	.12138	.10537	.10126	.08316	.07452	.07792	.07542	.1005

496 Defendants introduced an affidavit of C. M. Candler, Chairman of the Railroad Commission, in brief as follows:

Early in 1921 Defendant, Railroad Commission, employed Professor Riggs, a professor of Engineering in the University of Michigan, to make a survey of the Atlanta Gas Properties and report to the Commission what he considered its approximate fair value for rate making purposes. It was not the purpose of Defendant to ask him to fix such value, nor was it their purpose to surrender their judgment as to the value, but simply to secure his professional opinion for such consideration as defendant might deem proper to give it.

This report was received April 27th, 1921, that is a part of the record in the case before the Commission.

The following is an extract from pages 3 and 4 of said report, (then follows an excerpt from Professor Riggs' report, beginning, "The uncertainty of the valuation problem," on page — of this Brief of Evidence, and ending with table 4 on page — of this Brief of Evidence.)

In considering and weighing this report defendant was and still is of the opinion that Prof. Riggs' allowance for working capital was excessive, and that $266,677.00 was a fair allowance for necessary working capital on December 30th, last, and that if this excess of $147,323.00 is deducted from Prof. Riggs' valuation as of March 1st, 1921, $5,299,435.00 there would remain $5,152,112.00 to which if approximately $360,000.00 for additions and extensions since March 1st, last be added a valuation of approximately $5,512,000.00 as of December 30th, 1921, would be found.

I submit that the difference of approximately only $260,000.00 between the estimated value by it and that of Prof. Riggs is unusually small in estimating the value of such an extensive property and does not sustain the allegation that defendant's estimate was or is so low as to bring about confiscation when used as a base rate.

497 Defendant introduced an affidavit of C. M. Candler, in brief as follows:

I am chairman of the Railroad Commission of Georgia and have been since November 1911. In defendant's order of February 10, 1921, complainant was required to file with us monthly report of the operations. Attached exhibits are correct copies of said reports March to November, 1921, inclusive, some having been used after revision and adjustment as to taxes and depreciation as shown in its report of December 30, 1921, as bases from which defendant estimated complainants' earnings July to November, 1921, inclusive, under the $1.65 net base rate effective June 1st, 1921.

498 Georgia Railway and Power Company.

Atlanta Gas Light Co. Properties and Gas Properties in Decatur District.

Statement for the Month of March, 1921.

Account.	Amount.	Per M c.f.
Account.	Amount.	Per M c.f.
Revenue:		
Revenue from sale of Gas	$171,217.12	1.5408
	1,805.88	.0162
	173,023.00	1.5570
Expenses:		
Manufacturing	105,444.24	.9489
Distribution	10,451.77	.0941
Commercial expense	7,417.25	.0667
Expense	8,224.88	.0740
New Business	1,957.79	.0176
	133,495.93	1.2013
Maintenance Reserve	520.91	
	$134,016.84	1.2060
Less Taxes	7,814.81	
	$141,831.65	1.2763
Net after taxes	$31,191.35	.2807

499 Georgia Railway and Power Company.

Atlanta Gas Light Co. Properties and Gas Properties in Decatur District.

Statement for the Month of April, 1921.

Account.	Amount.	Per M c.f.
Revenue:		
Revenue from sale of Gas	229,508.68	1.8371
Revenue from other sources	312.79	.0025
	229,821.47	1.8403

Expenses:		
Manufacturing	89,277.61	.7149
Distribution	12,989.67	.1040
Commercial expense	8,167.66	.0654
Expense	9,229.54	.0739
New Business	1,822.58	.0146
	121,487.06	.9728
Maintenance Reserve	3,065.79	
	$124,552.85	.9974
Taxes	7,814.81	
	132,367.66	1.0600
Net after taxes	$97,453.81	.7803

NOTE.—Revenues represent meter reading period; expenses are for calendar month; income from regular meters covers an average period of 32 days; revenue from prepay meters cover periods of various lengths, some as long as 67 days. This due to necessary delays occasioned by changing meter gears to new rate. We estimate that the extra revenue credited to this month on these accounts is $27,615.33.

00 Georgia Railway and Power Company.

tlanta Gas Light Co. Properties and Gas Properties in Decatur District.

Statement for the Month of May, 1921.

Account.	Amount.	Per M c. f.
Revenue:		
Revenue from sale of Gas	$204,644.85	1.8920
Revenue from other sources	145.32	.0013
	204,499.53	1.8907

Account.	Amount.	Per M C.
Expenses:		
Manufacturing	88,222.67	.81
Distribution	13,696.40	.12
Commercial expense	7,195.65	.06
Expense	10,540.67	.09
New Business	1,829.61	.01
	121,485.00	1.12
Maintenance Reserve	7,768.60	
	113,716.40	1.05
Taxes	7,814.81	
	121,531.21	1.12
Net after taxes	$82,968.32	.76

NOTE.—By direction of Commission, "depreciation" not include

501 Georgia Railway & Power Company.

Atlanta Gas Light Co. Properties and Gas Properties in Decatu District.

Statement for the Month of June, 1921.

Account.	Amount.	Per M C. F
Revenue:		
Revenue from sale of Gas	$172,412.09	$1.83
Revenue from other sources	1,080.56	.01
	$173,492.65	$1.84
Expenses:		
Manufacturing	$72,105.03	$.76
Distribution	15,418.38	.16
Commercial expense	8,564.26	.09
Expense	11,586.61	.12
New Business	1,775.35	.01
	$109,359.63	$1.16
Maintenance Reserve	2,636.15	
	$106,723.48	$1.13
Taxes	7,814.81	
	$114,538.29	$1.22
Net after Taxes	58,954.36	$.62

NOTE.—By direction of Commission, "Depreciation" not include

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502 Georgia Railway & Power Company.

Atlanta Gas Light Company Properties and Gas Properties in Decatur District.

Statement for the Month of July, 1921, as Shown by the Books of Georgia Railway & Power Company.

Revenue from the sale of gas shown on this statement is for the quantity of delivered during the period between the meter readings and does not agree with the gas delivered during the calendar month, nor with the operating expenses which cover the calendar month, *nor with the operating expenses which cover the calendar month.* This is necessarily true because to physically read 32,150 meters requires considerable time and necessarily means that the readings of the meters cannot correspond with the calendar month; as to do that it would be necessary to read every meter simultaneously on the last day of the month. So the period covered by the meter readings of gas delivered from which the revenue is calculated is different from the period (the calendar month) covered by the operating expenses, and this difference, as well as many others, makes a single month misleading as a test of the effect of the gas rate.

Account.	Amount.	Per M C. F.
Revenue:		
Revenue from Sale of Gas	$156,316.10	1.7075
Revenue from other sources	394.39	.0043
	$156,710.49	1.7118
Expenses:		
Manufacturing	65,615.70	.7167
Distribution	16,722.68	.1827
Commercial Expense	7,642.49	.0835
Expense	10,346.16	.1130
New Business	1,643.44	.018
Depreciation	9,387.76	.1025
Taxes	7,680.00	.0839
	119,038.23	1.3003
Maintenance Reserve	1,509.67	.0165
	120,547.90	1.3168
Net Earnings	36,162.50	.3950

The net earnings shown above are not and will not be available in all for return because they must be applied (first) towards making good the deficit suffered by the Company under the rates fixed by the Commission for the four years 1917 to 1920, both inclusive. Based

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on the Railroad Commission's minimum valuation adjusted for th years in question, Mr. H. E. Riggs, an independent impartial engi neer, employed exclusively by the Railroad Commission, found th the Gas Company sustained a loss under the return the Railro Commission held it was entitled to for the years 1917 to 1920 $972,804. Amortizing this loss in equal monthly installments ov the next four years in the future would make a monthly charg against earnings of $20,267. Deducting this sum from the net ear ings for July as above leaves $15,895.59 applicable to a return. Mu tiplying this amount by 12 to give a year on the same basis woul be $190,747.08; or 3.89% per annum on $4,908,635, the minimu valuation fixed by the Railroad Commission; or 3.36% per annu on $5,674,435, the minimum valuation fixed by Mr. H. E. Rigg the Railroad Commission's Engineer; or 2.42% per annum on $7 887,293, being the fair valuation fixed by Mr. H. E. Riggs. Th above valuations are as of December 31st, 1920, plus the estimate cost of additions and improvements during the year 1921 of $37 000.

503 Georgia Railway and Power Company.

Atlanta Gas Light Company Properties and Gas Properties in D catur District.

Statement for the Month of August, 1921, *as Shown by the Books the Georgia Railway and Power Company.*

The "revenue from the sale of gas" shown on this statement is f the quantity delivered during the period between meter readings. is not for the gas delivered during the calendar month. This is ne essarily true, because physically to read 32,248 meters cannot be don simultaneously on the last day of the month. It requires time, a the readings of the meters for the whole city cannot correspond wi the calendar month. The revenue from the sale of gas is accor ingly calculated for the period covered by the meter readings re ported during the month.

The operating expenses, on the other hand, gives the exact amou expended during the month. The net revenue for any one mon calculated on this necessarily factitious basis makes any single mon misleading as a test of the effect of a gas rate. On this basis, ho ever, the figures for the month are as follows:

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Account.	Amount.	Per M C. F.
Revenue:		
evenue from sale of Gas	$163,962.83	1.6338
evenue from other sources	2,607.82	.0259
	166,570.65	1.6597
Expenses:		
anufacturing	84,443.96	.8414
istribution	14,587.71	.1454
mmercial Expenses	7,824.18	.0780
pense	10,385.79	.1035
w Business	1,784.66	.0178
preciation	9,387.76	.0935
axes	7,680.00	.0765
	136,094.06	1.3561
aintenance Reserve	8,235.80	.0821
	127,858.26	1.2740
Net Earnings	38,712.39	.3857

It will be observed that the actual expenses for the month were 36,094.06; though on above statement they are reduced by subcting $8,235.80, being amount of actual maintenance expenditures excess of reserve estimated for that purpose.

The net earnings shown above are not, and will not be, available full for a return on capital, because they must be applied first tord making good the deficit suffered by the Company under the tes for gas fixed by the Commission for the years 1917-1920 insive. The Railroad Commission had held that the Gas Company ght to earn 8% on its valuation. The Commission employed Mr. E. Riggs, an independent, impartial engineer, to investigate the tuation. He found that on the basis of the minimum valuation ed by the Railroad Commission, the Company during the years 17-1920 earned less by $972,804 than the Commission had ruled was entitled to earn.

Amortizing this loss in equal monthly installments over the next ur years in the future would make a monthly charge against the rnings of $20,267. Deducting this sum from the net earnings for ugust as above leaves $18,445.39 applicable to a return. Multiplyg this amount by 12 to give a year on the same basis would be 21,344.68; or 4.51% per annum on $4,908,635, the minimum valtion fixed by the Railroad Commission; or 3.90% per annum on ,674,435, the minimum valuation fixed by Mr. H. E. Riggs, the ilroad Commission's engineer; or 2.81% per annum on $7,887,-3, being the fair valuation fixed by Mr. H. E. Riggs.

The above valuations are as of December 31, 1920, plus the estites cost of additions and improvements during the year 1921 of 75,000.

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504 Georgia Railway and Power Company.

Atlanta Gas Light Company Properties and Gas Properties in D
catur District.

Statement for the Month of September, 1921, *as Shown by the Book of the Georgia Railway and Power Company.*

The "revenue from the sale of gas" shown on this statement is f the quantity delivered during the period between meter readings. T is not for the gas delivered during the calendar month. This is nec essarily true, because physically to read 32,423 meters cannot b done simultaneously on the last day of the month. It requires time and the readings of the meters for the whole city cannot correspon with the calendar month. The revenue from the sale of gas is ac cordingly calculated for the period covered by the meter readings re ported during the month.

The operating expenses, on the other hand, gives the exact amoun expended during the month. The net revenue for any one month calculated on this necessarily factitious basis makes any single month misleading as a test of the effect of a gas rate. On this basis, how ever, the figures for the month are as follows:

Account.	Amount.	Per Mcu. ft.
Revenue:		
Revenue from sale of Gas	167,725.03	1.7
Revenue from other sources	2,215.46	.0
	169,940.49	1.669
Expenses:		
Manufacturing	63,192.84	.62
Distribution	15,698.29	.15
Commercial Expenses	8,305.00	.08
Expense	11,589.04	.11
New Business	1,625.34	.01
Depreciation	9,387.76	.09
Taxes	19,931.00	.19
	129,729.27	1.27
Maintenance Reserve	5,328.99	.05
	135,058.26	1.32
Net earnings	34,882.23	.34

The net earnings shown above are not, and will not be available f full for a return on capital, because they must be applied first tow making good the deficit suffered by the company under the rates f gas fixed by the Commission for the year- 1917-1920, inclusive. T

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ailroad Commission had held that the Gas Company ought to earn % on its valuation. The Commission employed Mr. H. E. Riggs, n independent, impartial engineer, to inve-tigate the situation. He und that on the basis of the minimum valuation fixed by the Rail-ad Commission, the Company during the years 1917-1920 earned ss by $972,804, than the Commission had ruled it was entitled to rn.

Amortizing this loss in equal monthly instalments over the next ur years in the future would make a monthly charge against earn-gs of $20,267. Deducting this sum from the net earnings for Sep-mber as above leaves $14,615.23 applicable to a return. Multiply-g this amount by 12 to give a year on the same basis would be 75,382.76; or 3.57% per annum on $4,908,635 the minimum val-tion fixed by the Railroad Commission: or 3.09% per annum on 5,674,435 the minimum valuation fixed by Mr. H. E. Riggs, the ailroad Commission's engineer; or 2.22% per annum on $7,887,-8, being the fair valuation fixed by Mr. Riggs.

The above valuations are as of December 31, 1920, plus the esti-ated cost of additions and improvements during the year 1921 of 75,000.

05 Georgia Railway and Power Company.

tlanta Gas Light Company Properties and Gas Properties in De-catur District.

tement for the Month of October, 1921, *as Shown by the Books of the Georgia Railway and Power Company.*

Account.	Amount.	Per M cu. ft.
Revenue:		
evenue from Sale of Gas	$172,261.13	1.6703
evenue from Other Sources	1,726.33	.0167
	$173,987.46	1.6870
Expenses:		
anufacturing	70,103.93	.6797
istribution	17,841.94	.1730
ommercial Expense	8,235.31	.0799
xpense	13,383.56	.1298
w Business	1,585.45	.0154
preciation	9,387.76	.0910
axes	19,931.00	.1932
	140,468.95	1.3620
aintenance Reserve	4,147.34	.0402
	144,616.29	1.4022
Net Earnings	29,371.17	.2848

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506 Georgia Railway and Power Company.

Atlanta Gas Light Company Properties and Gas Properties in De
catur District.

Statement for the Month of November, 1912, *as Shown by the Book*
of the Georgia Railway and Power Company.

Account.	Amount.	Per Mcf.
Revenue:		
Revenue from the sale of Gas	$184,376.75	1.643
Revenue from Other Sources	1,795.71	.016
	$186,172.46	1.659
Expenses:		
Manufacturing	76,812.51	.684
Distribution	17,264.80	.153
Commercial Expense	9,233.53	.082
Expense	11,913.46	.106
New Business	1,607.55	.014
Depreciation	9,387.76	.083
Taxes	13,975.00	.124
	140,194.61	1.250
Maintenance Reserve	2,696.15	.024
	142,890.76	1.274
Net Earnings	43,281.70	

507 Georgia Railway and Power Company,

Atlanta.

Dec. 6, 192-

Hon. C. M. Candler, Chairman,
Railroad Commission of Georgia,
Atlanta, Ga.

DEAR SIR:

In further reply to your letter of December 3rd, your file 1394 I send you herewith enclosed the following statements, namely:

1. Statement showing the items of taxes on account of the G Department paid in the year 1920 and paid and estimated in t year 1921, with the increase or decrease in the various items.

2. Statement showing the items of taxes on account of the G Department actually paid during the year 1921 up to November 3 1921.

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3. Statement showing the amount of taxes on account of the Gas Department estimated for 1921, the amount paid up to November 30, 1921, and the other items to be paid during the year 1921 and to be paid in 1922, accrued during 1921.

In the year 1920 the Gas Department of the company earned no net income subject to the Federal Income Tax. As a matter of fact, it did not earn its operating expenses. In the year 1921 it will earn some net income subject to the Federal Income Tax. The chief item of increase in taxes for 1921 over 1920 is due to this Federal Income Tax, which in August was estimated at $56,704.70. This was estimated on the basis of 12½% of the net income subject to tax, as one branch of Congress had at that time passed the tax bill assessing 12½% on the income for the year 1921. Just before the act was finally passed, this percentage was made 10% for the year 1921. The act of Congress was approved November 23, 1921. The estimate in our statement of $56,704.70 for the Federal Income Tax for 1921 is, therefore, 20% too high, and there will have to be deducted from it the sum of $11,340. We will make this necessary adjustment in the months of November and December of the year 1921, so that the total taxes to be charged in November and in December on the Gas Department will be about $13,000.00 for each month. Yours very truly,

(Signed) P. S. ARKWRIGHT,
President.

508

Georgia Railway and Power Co.,
P. S. Arkwright, President,
Electric and Gas Building,
Atlanta.

Dec. 20, 1921.

Hon. C. M. Candler, Chairman,
Railroad Commission of Georgia,
Atlanta, Ga.

DEAR MR. CANDLER:

Your letter of December 19th, your file 13946, has been received, having reference to charging to our accounts for the year 1921 the Federal Income Tax for 1920, of $2,152.64.

The total Federal Income Tax for the year 1920, chargeable against the Gas Department of the company, amounted to $2,152.64. This charge should have been accrued in the books of the company for the year 1920. It was not entered on the books of the company during the year 1920. When it was paid in the year 1921, it was then entered on the books. This accounts for its appearing as a part of our tax payments for the year 1921. It of course is a charge against the income for the year 1920, and is not a proper charge for the income for the year 1921.

Yours very truly,

(Signed) P. S. ARKWRIGHT,
President.

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509 Also another affidavit of C. M. Candler, in brief as follows:

I have read the affidavit of P. S. Arkwright, filed in this hearing, to which there are exhibits purporting to be, "Statements showing amounts by which the Atlanta Gas Light Company has failed to earn or did earn 8 per cent. return on Railroad Commission's minimum valuation of $3,500,000.00, (Plus additions or adjustments) of properties, after allowing only 2½% for depreciation for the years 1917 to 1920, both inclusive." The statement in said affidavit that "an allowance for depreciation according to the rate stated by the Commission in its order of August 14th, 1918," insofar as it applies to the gas properties, is erroneous. The 2½% rate referred to was stated by the Commission on page 24 of the report and opinion in the Georgia Railway & Power Company case, and referred to that Company's properties. Electrical properties, overhead structures, complicated machinery, street cars, etc., are subject to greater wear and tear and deteriorate more rapidly than gas properties, underground mains, etc., and a larger percentage of depreciation for such properties than for gas properties is justified. The percentage allowed by defendant on the gas properties has been 2 per cent. on the undepreciated value of all physical properties in use, and not 2 per cent. on depreciable property only.

Also another affidavit of C. M. Candler, in brief as follows:

510 Attached hereto is a correct copy of an inventory and report as to the quantity and average price of coal and oil on hand September 15th, 1921, filed by complainant with Defendant Railroad Commission, used as evidence and constituting a part of the record in the rate inquiry.

Inventory.

September 15, 1921.

On hand.	Average price.	Amount.
Tons, 4,590,245	Gas Coal, Per Ton, 5.4802	$25,155.51
Gallons, 117,650	Gas Oil, per gallon, .056334	$6,627.80

Also another affidavit of C. M. Candler, in brief as follows:

I attach hereto a page of the Atlanta Constitution, a daily newspaper published in Atlanta, with an extensive circulation in said city, dated September 20, 1921, containing a full page advertisement by the Georgia Railway & Power Company, P. S. Arkwright, President, in which occurs the following paragraph, to-wit:

"This Company has for the past few months earned a fair return upon its gas properties, if the earnings of those months were to be regarded alone. But for the four years, 1917 to 1920, we sustained a loss of $972,804. from what, under the formula and valuation established by the Railroad Commission, we were entitled to earn."

At the time said advertisement appeared and for several months prior thereto, to-wit, since June 1st, 1921, the maximum net base rate allowed to be charged for gas by said Company was $1.65 per thousand cubic feet, and that said Railroad Commission's order of December 30, 1921, of which the complainant still complains, was based upon a study of complainant's earnings for 5 months, to-wit, July to November, 1921, inclusive.

Since the months of June, July, August and September of each year, being warm weather months, during which there is small use of gas for heating purposes, show uniformly smaller
511 consumption of gas than the Winter months, and that a study of operating results for these Summer months, because of such lessened consumption with overhead expenses continuing practically constant, shows results less favorable to complainant than if a like number of Winter months were included in a study thereof.

Also another affidavit of C. M. Candler, in brief as follows:

The following is a correct copy of exhibit No. 25, filed by P. S. Arkwright for complainant in the rate inquiry before the Railroad Commission October 31st and November 1st, last, and made a part of the record, the same being a schedule of gas rates of complainant since 1884.

Gas Rates in Atlanta.

Rate for the 1st 1,000 Cu. Ft. (Net Rate).

November 1914 to September 1918	$1.00
September 1918 to October 1920	1.15
October 1920 to February 1921	1.45
February 1921 to June 1921	1.90
June 1921 to date	1.65

512 Defendants introduced a letter from Jos. A. McCord, of the Federal Reserve Bank, Chairman of the Board and Federal Reserve Agent, to Judge E. J. Reagan, Attorney for the Railroad Commission, in brief as follows:

"I am enclosing you herewith the discount rates that were in effect in Federal Reserve District No. 6, (Altanta) on the dates requested by you, that is, on January 1, 1921, July 1st, 1921, September 1, 1921, and December 30, 1921. The accompanying sheet gives you all of the rates for the various classes of paper, but I presume what you desire is the rate on commercial paper, as that is the main source of discount of the Federal Reserve Bank. Therefore, to condense the matter, the following are the rates on the dates requested by you, for commercial paper:

Our rate that was in effect on January 1, 1921, was established on November 1, 1920, and continued in effect until the 8th of February, 1921, and that rate was 7% per annum discount. That would cover your request of January 1, 1921.

The next change in rate was on the 8th of February, 1921, which

was changed to 6% per annum, and said rate remained in effect until the 2nd day of November, 1921. Therefore, on the dates of July 1 and September 1, 1921, our rate of discount was 6%, which remained in effect until November 2, 1921, when it was reduced to 5½%.

The 5½% rate remained in effect until the 19th day of December, 1921, on which date the rate was reduced to 5% per annum, and this covers the last date requested by you, December 30, 1921, as the rate of 5% per annum is still in effect."

Discount Rates on Following Dates.

Maturities—Discount is calculated on basis of 365 days to year.	Effective. 12-19-21.	11-2-21.	6-22-21.	5-6-21.	2-8-21.	11-1-20.
Member Banks' Collateral Notes—Secured by U. S. Certificates of Indebtedness	5%	5½%	6%	6%	6%	5 %
Member Banks' Collateral Notes—Secured by U. S. Bonds or Victory Notes	5%	5½%	6%	6%	5½%	5½%
Member Banks' Collateral Notes—Secured by U. S. Treasury Gold Notes	5%	5½%	6%			
Member Banks' Collateral Notes—Secured by U. S. Bonds issued prior to 1917	5%	5½%	6%	6%	7%	
Member Banks' Collateral Notes—Secured by Commercial Paper	5%	5½%	6%	6%	7%	7%
Rediscounts—Customers' Notes—Secured by U. S. Certificates of indebtedness	5%	5½%	6%	6%	6%	5%
Rediscounts—Customers' Notes—Secured by U. S. Lib. Bonds or Victory Notes	5%	5½%	6%	6%	5½%	5½%
Rediscounts—Customers' Notes—Secured by U. S. Treasury Gold Notes	5%	5½%	6%			
Rediscounts—Customers' Notes—Secured by U. S. Bonds issued prior to 1917	5%	5½%	6%	6%	7%	7%
Rediscounts—Commercial Paper	5%	5½%	6%	6%	7%	7%
Rediscounts—Agricultural or Live Stock Paper	5%	5½%	6%	6%	7%	7%
Rediscounts—Trade Acceptances	5%	5½%	6%	6%	7%	7%

Open Market Purchases—Bankers' Acceptance (Rates furnished upon application).

JOS. A. McCORD,
Chairman Board of Directors.

514 We hereby agree that the above & foregoing brief is a full, complete succin-t and legal brief of all the evidence adduced in the above stated case, and that the same may be filed as a part of the record. Copy received, Rule nisi and all other service waived.

This Feb. 14, 1922.

E. J. REAGAN,
Attorney for Respondents.
J. PRINCE WEBSTER,
ROSSER, SLATON & HOPKINS,
SPAULDING, McDOUGALD & SIBLEY,
COLQUITT & CONYERS,
LINTON C. & JOHN L. HOPKINS,
Attorneys for Complainants.

The within brief is approved and ordered filed as part of the record in the within case.

This Feb. 15, 1922.

SAM. H. SIBLEY,
U. S. Judge.

Filed in office. This Feb. 16, 1922.
O. C. FULLER,
Clerk U. S. Court, Northern District of Georgia.

515 *Opinion.*

Before Bryan, Circuit Judge, Jack and Sibley, District Judges.

SIBLEY, *District Judge:*

By legislative act of February 16th, 1856, Atlanta Gas Light Company was granted a perpetual charter, with a franchise to make and sell gas for lighting purposes in the City of Atlanta, and to lay its pipes and apparatus in the streets, alleys and public grounds therein. By Act of October 14th, 1889, the franchise was extended to the furnishing of gas and electricity for all advantageous uses. No monopoly was granted, but one in fact exists. Many years since the Gas Company leased its property and franchises to the Georgia Railway & Power Company, which has since operated them. This company voluntarily established a rate based on one dollar per thousand feet, which was used until November 1st, 1918, when, on application to the Georgia Railroad Commission, which by law has authority to fix maximum rates for gas and other public utility companies, the rate was raised to $1.15. A further raise was granted to a base rate of $1.90 in February 1921. This rate was reduced to $1.65, effective June 1st, 1921, the reduction being acquiesced in by the companies. After citation to show cause why further reduction should not be made and after full hearing, an order reducing the rate to $1.55 was made, effective January 1st, 1922. A valuation of the property used was made by the Commission, aggregating $5,250,000, the value of the franchise being excluded, and likewise

no allowance made for cost of financing. Estimation of net income was based largely on operations from July 1st to December 1st, under the $1.65 rate and the rate fixed as just and reasonable was supposed to yield between seven and eight per cent clear on the investment. An injunction against the enforcement of this order is sought now, before any operation under it, on the ground that it is an unconstitutional invasion of the property of the two companies.

1. The rate attacked was fixed after full hearing, under
516 laws providing therefor. The clear and comprehensive opinion of the Railroad Commission recognizes as the applicable principles of law rules which we think are substantially correct, and it evinces a full and conscientious consideration of the evidence. Due process of law has been afforded. The real question is whether the rate so fixed is confiscatory, takes the use of private property for a public purpose without just compensation. As to that we express an independent judgment upon the case presented here, instead of reviewing the judgment of the Railroad Commission for error of law or fact, and the presumption is in favor of the action of the Commission. "We do not sit as a general appellate board of revision for all rates and taxes. We stop with considering whether it clearly appears that the Constitution of the United States has been infringed, together with such collateral questions as may be incidental to our jurisdiction over that one." San Diego Co., v. Jasper, 189 U. S. 439, 446. That question depends here on the value of the private property taken for use and the compensation probably to be afforded by the rate fixed as compared with the net returns received in the locality by other investments of capital of comparable security and permanency.

2. In estimating the value of the property whose use is taken, the Commission excluded from consideration the value of the franchises of the gas company. We think correctly. That the charter is a contract upon sufficient consideration, that the franchises granted under it are private property vendible and taxable as such cannot be disputed. That they may not be taken from the owners for public purposes or used adversely to the owners for such purposes without just compensation will not be denied. But the fixing of a just and reasonable charge to be made by a public service corporation is neither the taking from it of these franchises nor the use of them in the sense of the Constitution. Business which from its
517 nature or from circumstances of monopoly is of public concern is undertaken with the implication that charges made the public therein shall be reasonable. Private property devoted thereto becomes affected with a public interest. Public regulation of the charges is but the enforcement of the duty to make only reasonable charges. Munn v. Illinois, 94 U. S. 113. It may be said that in a franchise granted to do such a business is implied a covenant that the charges shall be just and reasonable; as it has been said that all grants of public franchises are upon the implied condition that they shall be used for the public good and if they are not used or are misused they may be revoked. New York Electric

Lines Co. v. Empire Subway Co., 235 U. S. 179. As pointed out in Munn v. Illinois, this implication has existed from the earliest times and did not first arise on the passage of regulatory legislation. The fixing of reasonable rates where unreasonable ones have been charged does not take the company's franchise nor impair it, but permits and requires its use according to its true original terms. If higher rates have been charged and profits made greater than the investment should naturally and ordinarily earn, so far from the franchise having acquired thereby any greater value, it has simply been abused. Regulation is no more than a form of sovereign visitorial power. It does not deprive the owner of his franchise nor take it or its use from him, but directs it to its proper and only legal use, to-wit: the service of the public and the earning for its owners of just and reasonable returns. While used in the public service like other property devoted thereto, the franchise is not, like the other property, taken from other service of the owner. It is the public's own contribution to the business, whatever its value therein, and not a thing that either party to the charter could justly think was to become a charge on the public in the fixing of reasonable rates. Otherwise the more liberal and valuable the franchise granted by the public, the greater would be the burden of rates the public would have to bear. The absurdity of so regarding it becomes further evident in attempting to value it in rate
518 fixing; for if it has a value, as is usually stated, because it enables its possessor to earn larger returns than can be attributed to a fair return upon his physical and other intangible property, its value being the capitalization of this excess, a rate could never be reduced. To reduce it would be necessarily to decrease and impair the value of the franchise because its earning power had been reduced. The owner of a public franchise for which the grantee paid nothing except what he invested in the business established under it is not entitled to have the value of the franchise included in the estimate of his property taken for public use in fixing the reasonable rate to be charged under the franchise. If the franchise were purchased by a payment to the public other than in the investments in the business, such payment, of course, would be an additional investment to be regarded. Nor is the fact that the franchise is taxed as property material. Neither the fact nor the amount of taxation is of any consequence to the owner because the tax paid is allowed as an expense of business and passed on to the customer.

As being to the contrary of this conclusion two cases having authority are cited; Monongahela Navigation Co. v. United States, 148 U. S. 312, and Wilcox v. Consolidated Gas Co., 212 U. S. 19. The other cases cited depend upon the former of these or are a part of the litigation dealt with in the latter. In the Monogahela case the United States sought to condemn a system of locks and dams of the company which had been lawfully erected under a franchise to take tolls on the transportation upon the Monongahela River without paying anything for the franchise, which was confessedly valuable beyond the value of the physical property. Against the contention that the franchise was not taken but only the property the Court

aid (p. 343) "But this franchise goes with the property; and the Navigation Company, which owns it, is deprived of it. The Government takes it away from the company, whatever use it may make of t itself, and the question of just compensation is not determined by the value to the government which takes, but the value
519 to the individual from whom the property is taken; and when by taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely of the value of the tangible property itself, but also of the franchise of which he is deprived." The distinction between putting the owner of the franchise completely out of the business of using it, and the requiring him by regulation to use it according to its true terms, hardly needs pointing out. This case established that a franchise when taken from the owner is property that must be compensated for, but does not establish that it is taken when rates are properly regulated. In the Consolidated Gas Co. case several companies were consolidated under legislation which expressly recognized as part of the property contributed to the consolidation the value of the several franchises specifically put at over seven million dollars and which permitted this value to be represented by capital stock to that amount, which was issued and sold to the public and traded in for twenty years. The public, through its representative, the legislature, having thus dealt, under these circumstances it was held that this seven million dollars of value must be included in the property on which a reasonable return was to be allowed, as otherwise this stock could have no income, a result evidently unjust. The Court refused to permit any subsequent increase in the value of the franchise to be allowed, which ruling is equivalent to a declaration that franchise value is ordinarily not to be considered, for all values that are involved, it is well settled, must be allowed as of the time of making the rate. The Court, on page 48, was careful to say that the decision of the case was based upon its own peculiar facts and not to be taken as a precedent in the valuation of franchises generally. The lower court, in further dealing with the case, trenchantly asserted the proposition that under ordinary circumstances franchise value should not be estimated in rate making; Consolidated Gas Co. v. Newton, 267 Fed. 231, 240.
520 We conclude that complainants are deprived of no constitution- right because their simple franchise to do business, which is all their charter gives them, even if it be prepetual as claimed, has not been valued as property whose use is taken from them.

3. The claim is made that the commission's allowance of $441,629 over and above physical property values as "going concern value" was insufficient and that a half million dollars ought to be added as cost of original financing. We recognize that the cost of financing a modern enterprise is commonly considered a part of the organization expense and chargeable as a capital investment. It is equally true that when this company was organized such outlays were more often treated as expense and retired from profits. What expense was

actually incurred here or whether it was carried as investment o retired by charging rates to cover it as expense, we do not know. W do not think it appears that in refusing to recognize this suppose investment or in fixing the "going concern value," which of neces sity is at l-ast a matter of opinion, at a less sum than was claime and sworn to, the Commission violated any Constitutional right o the complainants. The same is true as to their conclusion upon th questions of fact as to proper depreciation and working capital al lowance.

4. In ascertaining the present value of physical properties, though correct rules were announced by the Commission, we do not think they were exactly followed. We agree that in a period of changing values a decided tendency to higher or lower may be judicially no ticed and considered, as was done in Lincoln Gas Co. v. Lincoln 250 U. S. at page 268, and that a slavish adherence to cost of repro duction less depreciation is not required. Rates are not fixed ever day, but are designed to have some degree of permanency, and th probabilities of the immediate future, if fairly evident, are part o the situation dealt with. The Commission did not allow the ap preciation claimed on the investment since 1914, nor did it deduc from the investments of 1919 and 1920 and 1921, whic
521 were nearly a million dollars their admitted reproduction los but it did allow the appreciation in market price of real estat On the whole, averaging results and remembering that values are a l-ast matters of opinion upon which witnesses and that of ourselve may be no better than that expressed by the Commission, we think no Constitutional wrong clearly appears.

5. Losses, or more properly failures to earn eight per cent net re turns on the values since fixed by the commission, are claimed du ing the years 1917, '18, '19 and '20. During part of this time opera tions were under the rate voluntarily established by the company During the rest under raised rates allowed by the Commission. Th claim that the failure to earn a reasonable return, if establishe should now be either allowed as capital investment or amortized un der this or future rates we cannot allow. To concede this as a righ would be to guarantee income and would raise a correlative duty account for earnings beyond what were reasonable in the past. N limit could be placed to the period of the inquiry, nor could justi really be done by it to the individual stockholders or consumers act ally concerned, for these are constantly changing. A rate esta lished as reasonable, whether by the company or by the Commissio is not guaranteed by the Commission or the public. Whether it w actually yield more or less than a f return during its continuan is a risk of the business. We do no ay that it is within the discr tion of the Commission to consider the experience of the immedia past in fixing a just rate for the future, but we hold that no leg right exists to have disappointments or surprises in results balance

6. We find on the whole that it does not clearly appear that a fa return will not be afforded by the rate fixed upon the investment

the complainants. Taking as a basis of reasoning, as did the
522 Commission, the experience of the five months, July, August, September, October and November, during which the $1.65 rate was effective and excluding June, because its receipts may have been swollen from collections from the $1.90 rate through the prepay meters, we note a regular increase of consumption of about 10,000 Ms feet of gas each month. This was due either to increased consumption because the rate had been lowered or else to the longer nights and colder weather. If the first cause was operative, it will likely operate further under the new rate. If the latter was, it will operate to make consumption in December, January and February each equal to that of November. Giving all the chances to the complainants, and putting December as equal only to November and supposing that a recession will occur in the spring to July's consumption, we find a consumption through December of 621,164 Ms feet for six months, or a total of 1,242,328 Ms feet for twelve months. Again, comparing the net profits of the five months, they raise regularly from $34,283.56 in July to $47,697.67 in November. Part of this increase may be due to increased efficiency consequent on increased production, but most likely it is mostly due to the decreasing price of raw materials and of some labor shown in the record. We might fairly assume that the net profit of the last month is the fair index for the future, but let us, as in the case of consumption, add to the profit shown for the five months a profit equal to that of November as representing December and we have $251,509.66 for this six months, or $503,019.32 for the twelve months. But we disagree with the Commission in allowing the Federal income tax as an expense of business. It is laid with substantial uniformity on all persons and businesses, certainly on all comparable to this. It is assessed on the net profit of business after it is done, and payable the following year. The rate of it has often not been fixed until late in the year affected. The Acts laying the tax expressly declares it not to be allowable as an expense of business for the purpose of the tax. It is that part of the profit realized which is demanded by the
523 Government in return for its manifold service and protection. Though in some businesses the tax has been added to the price and passed to the consumer, this has not always been done. In banking and other money-lending business usury laws were not relaxed because of the income tax. Usurious interest is not legalized because the excess is to be paid over as income tax. Holders of government securities above the exempted amounts at so low a rate of return as four and a quarter per cent must pay the tax out of it. To permit law-controlled businesses to pass this tax to the customer except as it may come to be reflected in generally higher returns obtained by invested capital, would be to subvert the policy of the law that imposes it, and instead of placing them on an equal footing with other investments of capital of similar security and permanency, would be to give them an advantage. It appearing that a net sum of $45,364.00 was distributed as normal Federal income tax over the months dealt with above in the accounting of operating expenses and

taxes, the above profits estimated for a year should be increased by that sum, making $548,383.32 as the aggregate result. This, however, being figured for a $1.65 rate must have 10¢ per M. on the estimated consumption of 1,242,328 Ms. of gas, or $124,232.80 deducted, giving $424,150.52 as the probable income per year under the new rate, with no allowance made for increased consumption or reduced cost of production that seem quite probable. This income yields eight per cent on $5,301,818, a value in excess of that found by the Commission; a yield of seven per cent on $6,059,150, and six per cent on $7,069,176. So low a rate of return as six per cent was upheld in Wilcox v. Consolidated Gas Co., 212 U. S. 19, when conditions were more stable than now. We think, even were there considerable error in fixing values by the Commission, that the rate would not appear to be clearly confiscatory and subject to injunction before a trial of it. The preliminary injunction should be refused.

SAM'L H. SIBLEY,
U. S. Judge.

524 *Order Denying Preliminary Injunction.*

This case coming on for hearing for a preliminary injunction against an alleged constitutional rate of the Georgia Railroad Commission, before Samuel H. Sibley, Judge of this Court and the Honorable Nathan P. Bryan, a Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable George W. Jack, Judge of the District Court for the Western District of Louisiana; after hearing evidence and argument, and being advised further, it is considered, ordered and adjudged that the preliminary injunction be and the same is denied, for the reason stated in an opinion filed herewith.

This January 26, 1922.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Jan. 25, 1922, 8.50 A. M.
O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

525 *Petition for Appeal.*

To the Honorable Samuel H. Sibley, United States Judge for the Northern District of Georgia, and the Special Tribunal:

Whereas heretofore a restraining order was granted in said cause on the application of the complainants, and;

Whereas thereafter the application of the complainants for an interlocutory injunction was referred by the Honorable Samuel H. Sibley, United States Judge for the Northern District of Georgia to

Special Tribunal, composed of Honorable Samuel H. Sibley, United States Judge for the Northern District of Georgia, Honorable George W. Jack, United States Judge for the Western District of Louisiana, and Honorable Nathan P. Bryan, United States Circuit Judge for the Fifth Judicial Circuit, and

Whereas after due notice said application for temporary injunction against the defendants came on to be heard on the 13th day of January 1922 before said Special Tribunal, and

Whereas on the 27th day of January 1922 the injunction was denied.

Now come the complainants, Georgia Railway & Power Company and Atlanta Gas Light Company and pray an appeal from the judgment and decree aforesaid rendered by the said Special Tribunal, to the Supreme Court of the United States, because said injunction was not granted as prayed by the complainants, Georgia Railway & Power Company and Atlanta Gas Light Company, and the said complainants submit their assignments of error and pray for a reversal of said judgment and decree, and pray that the writ of injunction be granted in accordance with the prayers of complainants' petition and for such other relief as may be proper. Complainants, Georgia Railway & Power Company and Atlanta Gas Light Company,
526 show that if a supersedeas be not granted until the Supreme Court of the United States has passed upon the appeal they will be remediless.

The Court and the Commission hold that neither has any power or authority to compensate for past losses and a change in charge by complainants to a lower rate pending the appeal will cause irreparable damage should this Court be reversed and the lower rate be held to be confiscatory, for the loss of revenue during said period could not be compensated for in any subsequent rate that might be fixed. Also complainants have some 33,000 customers and if the Commission's changed rate is put into effect the net amount less for each customer will be small, scattered (though large in the aggregate) and impossible of collection should this Court be reversed and the rate be held to be confiscatory. Complainants have about 13,000 prepay meter customers and each change of rate necessitates a physical change of each meter costing in all about $6,000 each time they are changed, and such amount would be an absolute loss, should complainants' injunction be finally sustained.

Complainants Pray a supersedeas conditioned that it give bond upon such terms and for such amount as the Court may determine to be just and proper to reimburse the customers for any amount they are required to pay over and above a just fair and reasonable rate, which may be subsequently determined or held in this case; that by such supersedeas no injury or damage will accrue to any one, as the Court can by requiring a supersedeas bond and by subsequent orders protect all customers of the company and the public generally; that the amount which should be rebated to each customer can be kept account of from month to month and can readily be ascertained and the same could be paid to each customer should the Commission's

rate be finally upheld. Complainants therefore pray for a supersedeas and for such other relief as complainants may be entitled to.

GEORGIA RAILWAY & POWER CO.,
527 ATLANTA GAS LIGHT CO.,
By L. Z. ROSSER,
Their Solicitor & Attorney at Law.
ROSSER, SLATON & HOPKINS,
SPAULDING, MACDOUGALD & SIBLEY,
COLQUITT & CONYERS,
J. PRINCE WEBSTER,
LINTON C. & JOHN L. HOPKINS,
Of Counsel.

U. S. District Court. Filed in Clerk's Office Feb. 16, 1922.
O. C. FULLER,
Clerk.

Assignments of Error.

Now, on this the 15 day of February, 1922, come the plaintiffs in the above stated cause, the Georgia Railway & Power Company and the Atlanta Gas Light Company, and as part of their appeal file the following assignments of error upon which they will rely in the prosecution of their appeal in said case from the decree and order entered in said cause by the special tribunal on the 27th day of January, 1922, and pray that said order and decree may be reversed, for that said decree and order are erroneous, prejudicial and unjust to these complainants, and are confiscatory and in violation of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to-wit:

1. Because the said special tribunal, in sustaining the order and opinion of the Railroad Commission of Georgia, fixed, for the purpose of rate making, the value of complainants' fixed and physical properties as of the year 1914, plus the cost of improvements added since said date, less depreciation; the effect of which was to eliminate, in determining the value of complainants' fixed and physical
528 properties for rate-making purposes, the enhancement thereof since the year 1914, which, according to the undisputed evidence, amounted to $2,500,000.00; and under this plan of valuation adopted by the said special tribunal, the property of complainants is taken from complainants for public use without permitting them to earn any return thereon, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to them the equal protection of the laws.

2. Because said special tribunal erred in adopting the Railroad Commission's erroneous and illegal formula of valuation, and in not determining for itself the fair present value of complainants' physical property as shown by the undisputed evidence in the case.

3. Because the said Special tribunal held that, in fixing the value of the property of complainants, the value of the special franchise to lay and maintain their pipes in the streets should be excluded, notwithstanding the fact that, under the undisputed evidence, said special franchise was reasonably worth the sum of $1,000,000.00, and is assessed and pays ad valorem taxes on a value of $300,000.00; the effect of which holding by said special tribunal is to subject this particular part of complainants' property, without due process of law, to the public use without permitting complainants to earn any return thereon, in violation of the Fourteenth Amendment to the Constitution of the United States. Said special tribunal erred in thus excluding from the value of complainants' property said special franchise value.

4. Because the special tribunal, following the findings and opinion of the Railroad Commission of Georgia, held that for the purpose of fixing rates the value of complainants' working capital amounted to only $266,677.00, whereas the undisputed evidence showed that although the operation of the Company was economical, not less than $420,000.00 was and is the actual value of the property employed by complainants as working capital; that this sum was and is necessary to properly carry on the Company's business and serve the public, and that said sum was and is so actually em-
529 ployed by complainants. The effect of this holding by the special tribunal was and is to subject to the public use the property of complainants to the value of $153,323.00, without allowing said complainants any return thereon, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States. The said special tribunal erred in holding that the value of the working capital was a matter of opinion, and in not itself finding the present fair value of complainants' working capital.

5. Because said special tribunal held (sustaining the opinion of the Railroad Commission of Georgia) that said Commission had no power to consider, amortize or capitalize losses amounting to $1,025,114.38, which, under the undisputed evidence, complainants were forced to sustain during the years 1917 to 1920, inclusive, because of grossly inadequate rates fixed and enforced by the commission for said years. The elimination of these losses by the special tribunal, and its holding that said losses could not be considered, amortized or capitalized by the Commission, resulted in the confiscation of said sum so lost, in contravention of the Fourteenth Amendment to the Constitution of the United States, and the taking of said sum for public use without compensation.

6. Because the special tribunal erred in holding that in estimating the fair value of complainants' property used in the public service, the original cost of financing was not an element to be considered, notwithstanding the fact that the undisputed evidence showed that the cost of such financing amounted to $567,457.00; the effect of which holding by said special tribunal was to deprive complainants of their property of said value, without due process of law and in

contravention of the Fourteenth Amendment to the Constitution of the United States.

7. Because said special tribunal erred, as a matter of law, in holding that the Railroad Commission of Georgia, in fixing rates, erred in allowing an amount for normal Federal income taxes as a part of the operating expenses of complainants:

(*a*) Because that question was not involved in the pleadings.

530 (*b*) Because said finding reduces the net reasonable return of the complainants found and allowed by the Commission.

(*c*) Because, if the Railroad Commission had disallowed the income tax, it would necessarily have determined that a higher rate, to the extent of the sum of the income tax, was a fair and reasonable return.

(*d*) Because this disallowance of the normal income tax by the special tribunal renders the rate fixed by the Commission confiscatory and violative of the Fourteenth Amendment to the Counstitution of the United States.

8. Because said special tribunal held (following the opinion of the Commission) that the complainants' going concern value was only $441,629.00; whereas, under the undisputed evidence, said going concern value was at least between $700,000.00 and $1,000,000.00. The Commission held that ten per cent (10%) of the present fair value of complainants' physical property was the measure of its going concern value, but the Commission, in applying this formula, did not use the present fair value of complainants' physical property, but applied a value $2,500,000.00 less than its present fair value, thereby finding a going concern value $250,000.00 less than its true value. The special tribunal followed the Commission in this erroneous application of the formula, and thereby forced complainants to dedicate to the use of the public $250,000.00 of its property without just compensation, and in violation of the Fourteenth Amendment to the Constitution of the United States.

9. Because the special tribunal held, with the Railroad Commission of Georgia, that 2% of the present fair value of the physical property of complainants should be allowed for depreciation. It was the undisputed evidence that 2½% of the value of the physical property was a fair allowance for depreciation. The Railroad Commission held that 2% of the present fair value of complainants' physical property would be a fair allowance for depreciation, but in applying the formula it did not allow 2% of such fair value but, in fact, allowed 2% on $2,500,000.00 less than said present fair value. The special tribunal erred in holding, with the Railroad Commission, that 2% of the present fair value was a just al-
531 lowance for depreciation and also erred in sustaining the Commission's erroneous use of said formula, thereby forcing complainants to dedicate to the public use, without just compensation, the difference between the Commission's allowance for depreciation

and the just allowance which should have been made under the undisputed evidence, contrary to the Fourteenth Amendment to the Constitution of the United States.

10. Because said special tribunal erred in holding that while the Railroad Commission of Georgia did not allow depreciation since 1914 on the investment existent at that time, nevertheless the method adopted by the Commission averaged results; because, under the undisputed evidence, the increase in value since 1914 on the property existent at that time amounted to $2,500,000.00, whereas the value of the property added between January 1, 1914 and November 20, 1921 (after being depreciated 12% by the Commission, as was done), was at the time of the hearing before the Commission, a greater value than its cost price, thereby precluding any averaging of results, and resulted in a net undervaluation of complainants' property in the sum of $2,500,000.00 and the enforced dedication of that sum of property to the public use, without compensation, contrary to the Fourteenth Amendment to the Constitution of the United States.

11. (*a*) Because said special tribunal erred in holding that the rate fixed by the Commission of $1.55 per one thousand cubic feet of gas yielded, during the Commission's test period, a return of 8% on $5,301,818.00; whereas, under the undisputed evidence, said rate yielded only 5.1% on the Commission's valuation of $5,250,000.00.

(*b*) Because said special tribunal erred in holding that the rate of $1.55 per thousand cubic feet of gas yielded a 7% return on $8,059,150.00, for the reason that, under the undisputed evidence, said rate, when applied to the gas actually consumed, yielded only a return of 4.1% thereon.

532 (*c*) Said special tribunal erred in holding that the rate of $1.55 per thousand cubic feet of gas would yield, during the Commission's test period, a return of 6% on $7,069,176.00, for the reason that the undisputed evidence showed that applying said rate to the gas actually consumed would yield a return of 3.1% thereon.

12. Because said special tribunal erred in not finding, under the undisputed evidence, that the present fair value of complainant's property, exclusive of special franchise and cost of financing, was at least $7,500,000.00; for that, inasmuch as the rate enjoined would, under the undisputed evidence yield on that sum only 2.8%, such rate was confiscatory, contravening the Fourteenth Amendment to the Constitution of the United States.

13. Because, under the undisputed evidence the present value of plaintiff's property, including the special franchise and cost of financing, was at least $9,000,000.00, and the rate sought to be enjoined would yield a return of only 2.3% upon said valuation. Said special tribunal erred in not holding that the said valuation was the present fair value of complainants' property, and that the rates fixed by the

OSE IN CENTER

Commission were confiscatory, contravening the Fourteenth Amendment to the Constitution of the United States.

14. Because the special tribunal erred in excluding from the value of complainants' property used by the public the $2,500,000.00 increased value of the property existent in 1914, the special franchise valued at $1,000,000.00, and the cost of financing, amounting to $567,457.00; the result of all of which findings being the dedication of said sums to the public use without just compensation, in violation of the Fourteenth Amendment to the Constitution of the United States.

15. Because, for each and all of the reasons herein set forth, the special tribunal should have granted the interlocutory injunction as prayed in said original bill.

16. Because said special tribunal erred in not granting the injunction for this additional reason:

The finding of the present fair value of complainants' property and the fiding of what is a reasonable return upon that value
533 are judicial questions. The undisputed evidence showed the present fair value to be $9,093,207 (without considering the losses from 1917 to 1920, inclusive, sought to be amortized), and the reasonable return thereon to be 8%. Said special tribunal should have determined these to be true and granted the injunction accordingly.

Wherefore, the complainants, the appellants, pray that said interlocutory decree be reversed, and that such order as may be meet and proper be entered in this behalf.

GEORGIA RAILWAY & POWER CO.,
ATLANTA GAS LIGHT CO.,
By L. Z. ROSSER,
Their Solicitor & Attorney at Law.
ROSSER, SLATON & HOPKINS,
SPAULDING, MACDOUGALD & SIBLEY,
COLQUITT & CONYERS,
J. PRINCE WEBSTER,
LINTON C. & JOHN L. HOPKINS,
Of Counsel.

U. S. District Court. Filed in Clerk's Office Feb. 16th, 1922.
O. C. FULLER,
Clerk.

534 *Order Granting Appeal and Assessing Supersedeas Bond.*

This cause having come on to be heard on this the 16th day of February, 1922, upon the petition of the complainants, Georgia Railway & Power Company and Atlanta Gas Light Company, for an appeal to the Supreme Court of the United States from the interlocutory decree of the special tribunal to which it was submitted,

denying the injunction prayed for by complainants against the defendants, and each of them, to restrain them from enforcing or attempting to enforce the particular order of the Railroad Commission of Georgia which is the subject-matter of the bill of complaint herein, the defendants waiving appearance by counsel and the complainants appearing by their counsel, and the Court having seen and considered the assignments of error exhibited with the petition for appeal;

It is ordered that the appeal be and the same is hereby granted, to the Supreme Court of the United States from the judgment and decree aforesaid;

It is further ordered that the supersedeas be granted as prayed, upon the complainants making bond in the sum of $100,000.00, with good and sufficiant security, that plaintiffs in error shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good. Said bond shall be conditioned also to pay to each customer at the conclusion of this litigation, should the rate attacked be held valid, the difference between the amount that should have been collected from such customer under said rate and the sum actually collected, and all costs including attorneys' fees incurred in enforcing such repayment.

It is further ordered that the original restraining order of date December 31st, 1921, and the orders continuing said restraining order be continued in force until this appeal can be determined; the order herein operating as a supersedeas and maintaining the status.

It is further ordered that the Clerk of the United States District Court for the Northern District of Georgia, without delay, make and transmit to the Clerk of the Supreme Court of the United
535 States a full and true transcript of the proceedings in said cause, including the complaint and its amendments, the answers and their amendments and all motions therein, together with the evidence and affidavits therein filed, the restraining orders, the bond therefor, the opinion of the special tribunal denying the injunction, the assignments of error, the petition of appeal, the order granting the appeal and the bond provided by order of the court.

This 16th day of February, 1922.

SAM'L H. SIBLEY,
U. S. District Judge for the Northern District of Georgia.

U. S. District Court. Filed in Clerk's Office Feb. 16th, 1922.
O. C. FULLER,
Clerk.

Supersedeas Bond.

Know all men by these presents: That we, Georgia Railway & Power Company and Atlanta Gas Light Company, corporations of the State of Georgia, as Principals, and National Surety Company of New York, N. Y., a corporation duly authorized to make bonds in the courts of the United States, as Surety, are held and firmly

bound unto the Railroad Commission of Georgia and the other appellees in the full and just sum of One Hundred Thousand Dollars ($100,000.00), to be paid to the obligees, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents, sealed with our seals and dated this 16th day of February, 1922.

Whereas, lately, on the 27th day of January, 1922, a special tribunal under Section 266 of the United States Judicial Code, composed of Honorable Nathan P. Bryan, one of the Circuit Judges of the United States Circuit Court of Appeals of the Fifth Judicial Circuit, Honorable Samuel H. Sibley, United States Judge for the Northern District of Georgia, and Honorable George W. Jack, United States Judge for the Western District of Louisiana,
536 in a matter pending before it for a temporary injunction on the application of the said Georgia Railway & Power Company and the Atlanta Gas Light Company as plaintiffs, and the Railroad Commission of Georgia and the individual members thereof as defendants, judgment was rendered and an order made denying the interlocutory injunction against said Railroad Commission of Georgia and the individual members thereof, and the said Principals, the Georgia Railway & Power Company and the Atlanta Gas Light Company, having obtained an allowance of appeal to the Supreme Court of the United States to reverse said judgment and order in the aforesaid suit which is pending in the United States District Court for the Northern District of Georgia, and on said appeal a supersedeas having been granted complainants, Georgia Railway & Power Company and Atlanta Gas Light Company, upon condition that they give bond with good and sufficient security in the sum of One Hundred Thousand Dollars ($100,000.00), that plaintiffs in error shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good; said bond to be conditioned also to pay to each customer at the conclusion of this litigation, should the rate attacked be held valid, the difference between the amount that should have been collected from each customer under said rate and the sum actually collected, and all costs including attorneys' fees incurred in enforcing such repayment; and,

Whereas, a Citation directed to said defendants admonishing them to be and appear before the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty days from and after the date of said application;

Now, the condition of the above obligation is such that if the said Georgia Railway & Power Company and said Atlanta Gas Light Company shall prosecute said appeal to effect and pay all costs if they shall fail to make good said plea and comply with the terms of the order of supersedeas, then said obligation to be void, else to remain in full force and effect.

537 GEORGIA RAILWAY & POWER COMPANY,
By P. S. ARKWRIGHT,
President;

Attest:

[Corporate Seal.]

W. H. WRIGHT,
Sec'y.

ATLANTA GAS LIGHT COMPANY,
By P. S. ARKWRIGHT, [SEAL.]
Vice President,
Principals.

Attest:

[Corporate Seal.]

R. C. CONGDON,
Sec'y.

NATIONAL SURETY COMPANY,
By WILLIAM McCALLEY, JR., [SEAL.]
Attorney-in-Fact,
Surety.

[Corporate Seal.]

Approved: Feb. 17, 1922.
SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office, Feb. 17, 1922.
O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

538 *Præcipe.*

To the Clerk of the United States District Court for the Northern District of Georgia:

Please prepare a transcript of record of the said case on appeal to the Supreme Court of the United States, containing the following items:

1. The Bill of complaint.
2. The answer of defendants.
3. The restraining order.
4. The orders continuing the hearing and restraining order until the 27 day of January, 1922.
5. Bond for restraining order.
6. Order of reference to three Judges.
7. Brief of evidence and affidavits introduced at the hearing.

8. The opinion of the three Judges denying the temporary injunction.

9. The order of the special tribunal denying the temporary injunction.

10. The petition for appeal.

11. The assignments of error.

12. The order granting the appeal and supersedeas.

13. The supersedeas and cost bond.

14. The Citation on appeal with acknowledgment of service thereon.

15. This præcipe.

16. The Clerk's certificate with certificate of costs.

GEORGIA RAILWAY & POWER CO.,
ATLANTA GAS LIGHT CO.,
By L. Z. ROSSER,
Their Solicitor and Attorney at Law.
ROSSER, SLATON & HOPKINS,
SPAULDING, MacDOUGALD & SIBLEY,
COLQUITT & CONYERS,
J. PRINCE WEBSTER,
LINTON C. & JOHN L. HOPKINS,
Of Counsel.

539 It is hereby stipulated and agreed by and between counsel for the parties to the above entitled cause that the above and foregoing præcipe calls for the preparation of the transcript of record in said cause containing all matters necessary or proper for the consideration of said cause on appeal to the Supreme Court of the United States.

This — day of February, 1922.

ROSSER, SLATON & HOPKINS,
SPAULDING, MacDOUGALD & SIBLEY,
COLQUITT & CONYERS,
J. PRINCE WEBSTER,
LINTON C. & JOHN L. HOPKINS,
Att'ys for Appellants.

E. J. REAGAN,
Att'y for Appellees.

U. S. District Court. Filed in Clerk's Office, Feb. 16, 1922
O. C. FULLER,
Clerk.

540 *Citation.*

In the United States District Court for the Northern District of Georgia.

United States of America to the Railroad Commission of Georgia, and the individual members of said Commission, to-wit, C. M. Candler, chairman; Paul B. Trammell, James A. Perry, J. D. Price, and John T. Boifeuillet, Greeting:

You are hereby cited and admonished to appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty (60) days after this citation bears date, pursuant to the appeal allowed and filed in the office of the Clerk of the United States District Court for the Northern District of Georgia, wherein Georgia Railway & Power Company and Atlanta Gas Light Company, corporations of the State of Georgia, are appellants, and you are appellees, to show cause, if any there be, why the decretal order rendered against said Georgia Railway Company and Atlanta Gas Light Company, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Sibley, Judge of the United States District Court of the United States for the Northern District of Georgia, this 16 day of February, 1922.

[Seal U. S. District Court, N. D. Georgia.]

SAML. H. SIBLEY,
U. S. Judge for the Northern District of Georgia and One of the Judges Constituting the Special Tribunal in said Cause under Section 266 of the Judicial Code and the Judge to Whom the Original Bill Was Presented.

Due service of the above and foregoing citation on appeal is hereby admitted, this 18th day of February, 1922.

E. J. REAGAN,
Attorney for Appellees.

U. S. District Court. Filed in Clerk's Office Feb. 16, 1922.
O. C. FULLER, *Clerk.*

541 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Northern District of Georgia, ss:

I, Olin C. Fuller, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 540 pages of printing and writing contains a true copy of the record, assignments of error and all proceedings in the case of Georgia Railway & Power Company and

Atlanta Gas Light Company, Appellants, versus Railroad Commission of Georgia of the State of Georgia, et al., Appellees, Being Case No. 181 In Equity and No. 92 Appeals, as specified in the præcipe of counsel therein as fully as the same remains of record and on file in my office at Atlanta, Georgia, except that the Original Citation with acknowledgment of service thereon is included therein in the stead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of said District Court at Atlanta, Georgia, this the 3rd day of March, A. D. 1922.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
Clerk U. S. District Court for the Northern District of Georgia.

Endorsed on cover: File No. 28,756. N. Georgia D. C. U. S. Term No. 801. Georgia Railway and Power Company and Atlanta Gas Light Company, appellants, vs. Railroad Commission of the State of Georgia, C. M. Candler, chairman, et al. Filed March 10, 1922. File No. 28,756.

Office Supreme Court, U. S.
FILED
NOV 4 1922
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922

No. 298
(Old No. 801, October 1921)

GEORGIA RAILWAY & POWER COMPANY AND ATLANTA GAS LIGHT CO.
Appellants

vs.

RAILROAD COMMISSION OF GEORGIA Et al.
Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR PLAINTIFFS IN ERROR

L. Z. ROSSER,
JACK J. SPALDING,
WALTER T. COLQUITT,
ROBERT G. DODGE,
J. PRINCE WEBSTER,
LINTON C. HOPKINS,
Attorneys for Appellant.

Johnson-Dallis Company, Printers, Atlanta

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IN THE

Supreme Court of the United States

GEORGIA RAILWAY AND POWER COMPANY

AND

ATLANTA GAS LIGHT COMPANY,
Appellants,

vs.

RAILROAD COMMISSION OF THE STATE OF GEORGIA, C. M. CANDLER, CHAIRMAN, ET AL.,
Appellees.

No. 298.
October Term,
1922.

STATEMENT OF CASE.

This case arose in the District Court for the Northern District of Georgia upon a bill filed by appellants on December 31, 1921 (R. p. 1) for an injunction to restrain the Railroad Commission from undertaking to enforce an order which it had entered on December 30 (p. 14) fixing the new rates that appellants were authorized to charge for gas. The bill alleged that the rates were confiscatory.

There was a hearing before three judges and the injunction was denied (Opinion, pp. 390-396). The case is in this court on appeal from that order, as authorized by section 266 of the Judicial Code.

In authorizing appeals to this court from orders denying interlocutory injunctions Congress recognized that there might be cases where rates fixed by state commissions could

be demonstrated to be obviously confiscatory, although not having been subjected to the test of actual experience.

The appellants contend that this is such a case; that the Commission adopted a method of valuing the property which is erroneous as matter of law; that the real value, determined by methods which have been sanctioned by this court, and disregarding all elements as to which there is any controversy, is practically agreed upon; and that the anticipated income to be derived from the new rates, as estimated by the Commission and the court below, will yield a return upon that value so small as to be confiscatory.

The appellants also contend that the Commission failed to include in its valuation certain items of property or elements of value which should have been included, but even if these are totally disregarded and only admitted items are to be taken into consideration it is contended that the rates are manifestly confiscatory.

The method of valuation adopted by the Commission is set forth in its opinion (pp. 15-23). From this, it appears that the Commission ignored the undisputed evdence, including the report of its own Engineer, as to reproduction cost as of the date of the inquiry (October-November, 1921) and the fair value as of that date, and adopted a method of arriving at an estimate of original cost of the property by taking the pre-war reproduction cost as of January 1, 1914, and adding thereto the actual cost of subsequent additions, and then depreciating the whole, without allowing anything whatever for the very great enhancement in the value of the physical properties which was proved to have taken place between January 1, 1914, and the date of the hearing.

This is not the ordinary case of opposing opinions of engineers.

Not only is there an absence of conflicting testimony as to values, but in other important respects the record shows that there is no controversy between the parties. Thus it is clearly conceded that the Gas Company's plant is in excellent condition and that it is and has been well and economically managed.

The Commission says (pp. 15-16):

> "We have found nothing to criticise in the strictly operating reports of the Company. Its Gas business seems to have been economically and intelligently managed and the best results possible, under the present conditions, obtained."

Mr. Brinckerhoff testified in 1921 that he had carefully investigated this property in 1914 for the special purpose of determining if it was efficiently and economically operated and that, in his opinion, the property was then economically and well managed and "That it is a very well handled and operated plant at this time" (p. 287).

Professor Riggs of the University of Michigan, who was employed by the Commission early in 1921 to make a survey of the property of the Company and report to the Commission as to its fair value for rate making purposes (see p. 375), says in his report:

> "I am impressed with the effectiveness of the equipment. The coal handling plant is as good as I have ever seen in a gas plant. The coal gas generating plant is most up to date." (p. 236.)

> "The gas property in Atlanta is a good property, and while not at all overdeveloped, it is keeping fairly well abreast of other prosperous properties in comparable cities in the United States, so far as plant is concerned." (p. 237.)

THE HISTORY OF GAS RATES IN ATLANTA.

The Atlanta Gas Light Company was incorporated by an act of the Georgia Legislature, passed in 1856 (p.297). This Company owns substantially all the gas properties in Atlanta and vicinity, except the property at Decatur, a suburb of Atlanta, which is owned by appellant Georgia Railway & Power Company, to which Company all the property of the Atlanta Gas Light Company has been under lease since January 1, 1920 (p. 311).

These companies, during their respective administrations, have furnished excellent service during all normal times (pp. 15-16, 299).

Under the laws of Georgia the Railroad Commission does not approve rates but fixes them. For many years prior to September, 1918, the rate which the Atlanta Gas Light Company was permitted to charge for gas was $1.00 per thousand cubic feet (p.180.)

Finding that war conditions were making it impossible for it to continue to supply gas at this price it applied to the Commission on April 16, 1918, for relief (p. 336). After a hearing in May and June of that year the Commission made an order on August 14, 1918, granting an increase of 15 cents per thousand feet (pp. 38-39), but owing to an injunction obtained by the City of Atlanta, this rate did not become effective until on or about November 1, 1918, more than five months after the application was made (p.336).

On or about April 21, 1920, application was made to the Commission for further relief, but no order was made until September 22, 1920, when the Commission granted further partial relief effective October 1, 1920 (pp. 336, 337, 79, 101).

These increases in rates proving inadequate, further relief was sought from the Commission by petition filed on November 28, 1920. On this petition an order was entered on February 10, 1921, establishing the base rate of $1.90 per thousand feet, effective March, 1921 (pp. 334, 337, 109).

Operating under these orders prior to the order of February 10, 1921, **the net earnings of the appellants for the four years from 1917 to 1920 inclusive were substantially one million dollars less than the amount of a fair return as recognized by the Commission** (pp. 251, 256, 304, 352).

As Professor Riggs, the Commission's expert, says:

> "During these four years, the Atlanta Company not only failed to make a profit, but earnings were below a fair return by well into a million dollars." (p. 256.)

During the year 1920, indeed, the Company not only did not earn a fair return but suffered an actual loss on its business of $57,494 (p. 250).

Notwithstanding the past losses the Commission proceeded, after the new rate had been in effect something over one month, to issue an order on May 28, 1921, effective June 1, 1921, reducing the rate by 25 cents per thousand feet (pp. 119-123).

This order was issued without any notice to the appellants or opportunity for a hearing. (See paragraph 8 of bill (p. 3) and paragraph 4 of answer (p. 25). The Company filed its protest (p. 335).

On September 20, 1921, without any complaint from any one, the Commission on its own motion issued a rule calling on appellants to show cause why their rates should not be further revised (p. 15). The appellants responded and asked

for an increase in their rates (pp. 137-152). Hearings were had ending November 2, 1921, and on December 30, 1921, an order was issued reducing the rate to $1.55 net per thousand feet effective January 1, 1922. This order will cause, as the Commission found, a further reducton of the income of the appellants by about $130,000 annually (p. 22). This order refusing to increase rates and to restore, at least in part, the reduction made without notice on May 28, 1921, and on the contrary, further reducing rates, is the order complained of in this case.

THE METHOD OF VALUATION ADOPTED.

The Commission gave no consideration whatever, so far as the main portion of the plant is concerned—to-wit, all of it that was in existence before 1914—to the great increase in reproduction cost and the great decline in the value of the dollar which have resulted from the war. Feeling that conditions in 1921 were abnormal, they made no attempt to get at a level of prices which is likely to continue for a number of years.

They dismissed these facts entirely from consideration on the ground that prices resulting from the war were "abnormal" (p. 18), and made no effort to get at the probable future duration of these prices or to determine a level of prices likely to continue for a number of years in the future.

The appellants did not and do not contend that reproduction cost, as of a time when prices are temporarily at an abnormal level, is to be taken as the test of value. That was not the situation in the fall of 1921. Prices at that time had fallen very materially since October, 1920, when, as is agreed by all, the peak of the wartime high prices had been reached (see Riggs, p. 257; Report of Commission, p. 340). In September, 1921, prices of labor and materials were no higher and were probably lower than the average for a five-

year period ending at that time (Luick, p. 278). They were lower in September than in January, 1921 (pp. 262, 278), and Professor Riggs shows that in January of that year they were lower than in January of either of the two preceding years (see table on p. 240). The Commission utterly ignored the opinion of its own expert, contradicted by no evidence in the case, that "prices will again stabilize at figures considerably lower than the peak of 1920, but far above any pre-war level" (p. 241), and that, in view of the history of price fluctuations after other wars "we may expect a stabilization on something approximating present day prices" (p. 257). Luick agreed with this (p. 275), as did Cavanaugh (p. 277) and Brinckerhoff (p. 285); and no opinion in any way conflicting with this was expressed by any one.

By its failure to pay any attention whatever, so far as concerns that large proportion of the plaintiff's property which it owned on January 1, 1914, to this conceded "higher plateau of prices" (see **Galveston Electric Company** v. **Galveston,** 258 U. S.) the commission utterly disregarded the admitted large increase in the value of the property in question since January, 1914, and the great depreciation in the value of the dollar. It is submitted that the commission thereby violated the constitutional rights of the appellants.

Although the Commission in its opinion says that it was endeavoring to ascertain the present value of the property, what it really **did** was to adopt a figure representing its conclusions as to actual cost less depreciation.

As the court below said, the Commission announced "correct rules" of valuation, but did not follow them (p. 394).

That the real intent of the Commission was to get at a figure representing actual cost less depreciation is apparent from this statement of its opinion (pp. 18-19):

"In our judgment the 'fair value' of this gas plant at this time for rate making purposes may be reasonably approximated by consideration, in the absence of any evidence as to original or historical cost, of replacement cost under normal conditions as of January 1, 1914, immediately preceding price disturbances by war, plus the actual construction cost of additions, extensions and betterments since that date."

Indeed, the figure which the Commission found to represent the physical valuation, undepreciated, to-wit, $4,984,536 (p. 19) is less than the estimate made by their Engineer, Professor Riggs, of the "probable actual investment", his figure being $5,039,874 (pp. 242-243), although he included the additions and betterments only through the second month of 1921, while the additions made later in the year and included by the Commission in its valuation amounted to over $360,000. (p. 30.)

The Commission evidently approached the question of valuation as it had uniformly done in the past. In its decision of August 14, 1918, concerning rates to be charged by the appellant, Georgia Railway & Power Company, in its street railway and electric business, the Commission said (pp. 52, 54):

"The Commission is abundantly satisfied that it can, without difficulty, arrive at a very conservative estimate of the minimum value of the property of this Company in the public use. The Company may complain at our use of a minimum value, rather than a fair value, but certainly the public cannot.

"We have not undertaken to arrive accurately at actual values, but have estimated minimum values."

It is apparent from that decision that the Commission adopted a valuation known by it to be much less than actual value in spite of the fact, recognized by it, that reproduction costs had increased a great deal.

So, in its decision of February 10, 1921, as to gas rates, the Commission said (p. 106):

> "For the purpose of this case we are going to adhere to the value considered for this property by this Commission in 1918, which gave a value of $3,500,000, plus actual additions and usual allowances. When this value was fixed by the Commission in 1918, we took occasion to say then as to the value of applicant's property as a whole 'we have not undertaken to arrive at actual value, but have estimated minimum values'. If the value considered by the Commission in 1918 of $3,500,000 was correctly stated as a minimum value can there be any doubt that it is not more than a minimum value as of this date?"

Again, in its last report, to the Governor, the Commission says, with reference to the applications of public utility corporations for increased rates because of increasing costs of material and labor since 1915:

> "The Commission adopted the policy, possibly a mistaken one in view of subsequent events, of holding any increase granted down to the most meagre return which it believed could be sustained in the courts should any such be carried there by the utilities (p. 340.)

> "We have in every instance, held their values to the lowest possible figures consistent with well defined principles as to valuation. We have held their returns on these minimum values to figures only short of a

> denial of what is reasonable. * * * * The Commission was more intent on keeping these utilities going and able to adequately serve the public with rates that would meet operating expenses, taxes, and depreciation, than it was for providing the reasonable returns which, under the law, they had the right to demand, even in times of universal depression." (p.341.)

In his report to the Commission under date of April 27, 1921, Professor Riggs said, with regard to the valuation which the Commission had placed upon the gas property of the appellants, that it was "the extreme minimum to represent actual investment" (p. 257).

THE EVIDENCE AS TO VALUATION AND THE COMMISSION'S FINDING.

This court is not asked to pass upon conflicting testimony of expert witnesses, but to deal only with facts and figures concerning which there is practical agreement.

At the hearing in October and November, 1921, as a result of which the Commission issued the order in question in this case, the Commission for the first time had before it a complete inventory and schedule of the gas property of appellants, prepared by the engineers, including Mr. Luick and his assistant Mr. Cavanaugh, they being members of the W. A. Baer Engineering Company of Chicago.

Mr. Luick is referred to by the Commission as an engineer "who impresses us as capable and honest" (p. 18). Luick testified at length concerning reproduction cost, depreciated, and fair value as of September 30, 1921 (pp. 260-275, 278-280). Cavanaugh also testified in support of the appraisal (pp. 275-277).

The other engineers called by the appellants were Mr. Brinckerhoff and his assistant. Mr. Brinckerhoff is a member of the engineering firm of Parsons, Klapp, Brinckerhoff & Douglas, who were employed in July, 1921, to value the gas plant of the appellants by Drexel & Company, Bankers, "for the purpose of establishing the present value of this property * * * with a view of financing it hereafter" (p. 281). Brinckerhoff testified as to the value of the property as of September 30, 1921 (pp. 280-290, 315-317) and his assistant also testified (pp. 290-293). Mr. Brinckerhoff is the engineer whose earlier report of reproduction value as of January 1, 1914, was adopted by the Commission as its starting point for determining values, the Commission speaking of this report as having been made "by the well and widely known engineering firm of Parsons, Klapp, Brinckerhoff & Douglas for Drexel & Company, bankers, financing for the Company, then and now" (p. 19), and saying further that said firm was of such high character that its appraisal made for Bankers had "special value."

In addition to these witnesses the Commission had before it the elaborate report of Professor Riggs (pp. 233-259) who, as has been said, had been employed by the Commission early in 1921 to make a report on what he regarded as the fair value of the Atlanta Gas plant for rate making purposes (p. 375).

The estimates of the three engineers of the present valuation of the physical properties, based on cost of reproduction less depreciation, were:

Luick	$6,100,750	(p. 269)
Brinckerhoff	6,025,810	(p. 221)
Riggs	6,452,994	(p. 244)

The Commission adopted a valuation of $4,416,299 (p. 19) based on reproduction cost, as of January 1, 1914, less depreciation, of the property existing before 1914, and on the cost, less depreciation, of the properties added since, all of them, even those added in 1921, being depreciated by the full amount of 11 4-10%.

GOING CONCERN VALUE.

For going concern value the Commission followed its usual rule and added 10% to its valuation of the plant (p. 19). Professor Riggs adopted the same percentage, and although the other two engineers placed a larger value on this element, both actually and by way of percentage, it will be assumed, for the purposes of this case, that no objection can be made by the appellants to this percentage and that whatever be the proper valuation of the plant 10% is to be added to it for "going concern value."

Mr. Brinckerhoff (pp. 284-5) places this value at $700,000.00. He investigated the books for 15 years, 1906 to 1920, inclusive; gives the actual expenditures by years, and number of new customers obtained during this period, namely 19,202 customers. He calculates the actual amounts in money year by year. His evidence is explicit and full.

Mr. Luick (pp. 271-2) analyzes the situation with respect to going concern value, on the several bases in use and fixes it at $1,000,000.00.

Mr. Arkwright, President of the Company (pp. 298-300) shows that the Company has never been compensated in any way for the expense of attaching these customers, either by high rates or otherwise, and shows that it has given fine service. That it sold its appliances at cost to attract customers. He emphasizes the value of having these cus-

tomers, and gives full particulars in reference thereto. The Commission allowed only $441,639.00 (p. 30), being 10% of its estimate of value. On the valuation shown by the undisputed evidence this item would have amounted to over $600,000.00.

WORKING CAPITAL.

With respect to working capital the Commission did the company an injustice which is manifest.

The three engineers valued this item as follows:

Luick	$425,000	(p. 270 bottom)
Brinckerhoff	418,443	(p. 283)
Riggs	414,000	(p. 243)

The commission allowed only $266,677. It is plain that this was not justified.

Brinckerhoff arrived at his figure by determining from the books just what working capital the company actually had on hand month by month for the year last preceding.

His conclusion is not a matter of mere expert opinion but is the result, as he says, of "a compilation of actual figures from the books."

Inasmuch as the commission found, as has been stated, that there was nothing to criticise in the operating reports of the company and that the business had been economically managed (pp. 15-16) it is hard to find any reason to justify it in not accepting these figures of Brinckerhoff just as it accepted his figures for the reproduction cost as of January 1, 1914.

Luick (pp. 267-268, 219) by an independent method of determining from the actual experience of the company its reasonable needs for working capital, arrived at almost the same figure as Brinckerhoff.

Professor Riggs, whose figure was substantially the same as that of the others, says (pp. 243-244):

> "I have had occasion to make a pretty careful study of the subject of stores and supplies and working cash capital. I do not think that such a Company as this one should operate with less than two months' supplies of coal and oil on hand. Attached hereto as appendix B, is a statement of stores and supplies on hand, for gas department use only, at the end of each of the last six years. Monthly balance sheets will show no wide variation from the total as shown by the December statement. There also appears as sheet two (2) of this appendix a monthly summary of coal and oil stocks for the years 1915 and 1920. These stocks are essential to the business and a large amount of money is tied up in stock all the time. In addition to this the amount of money invested in labor and material in gas, which has been used but not yet paid for, gas on hand, in mains and holders is fairly represented by one-sixth, rather than the usual allowance of 1-8 or 1-10 of the operating expense.
>
> * * * * * *
>
> "While the allowance I have made is considerably less than testified to by Mr. Arkwright, it is believed to be a substantially correct amount to represent that sum of money which is constantly tied up in the business and which cannot be withdrawn from the business."

The Commission adopted an obviously unfair and unsound method of determining the necessary working capital. It seems that in 1914 Brinckerhoff estimated working capital at a certain figure which amounted to $8.23 per customer existing at that time. What the Commission did was to take the number of customers in 1921 and multiply it by $8.23 (pp. 19, 30). In other words, the Commission disregarded completely the tremendous increase since 1914 in the cost of labor, supplies, and all other items that enter into manufacturing cost (see Riggs, p. 249) and the tremendous shrinkage in the purchasing power of the dollar.

THE ITEM OF APPRECIATION ALLOWED BY THE COMMISSION.

To its estimate of the value of the plant as a going concern, with an allowance for working capital, the Commission added $125,395, stating that this covered "additional appreciation in the Decatur properties, in land in Atlanta, and other appreciable items" (p. 20).

In point of fact, even this paltry concession to the recognized appreciation in the value of such properties was illusory except as to about $35,000 which appears to have been allowed for increased land values (see p. 311). The balance of something over $90,000 merely serves to bring the present valuation of the Decatur plant back to $170,000, the figure used by the Commission in its opinion of February 10, 1921 (p. 107), instead of $78,732, the figure representing only book cost which the Commission used in its valuation now under consideration (p. 19).

THE RETURN WHICH THE NEW RATE WILL YIELD.

Assuming as did the Commission that 10% of the depreciated value of the physical properties represents going con-

cern value (and reducing Luick's and Brinckerhoff's estimates accordingly) the figures of the three engineers and of the Commission are as follows:

	Luick	Brinckerhoff	Riggs	The Commission
Plant, depreciated	$6,100,750	$6,025,810	$6,452,994	$4,416,299
Going concern value	610,075	602,581	645,299	441,629
Working Capital	425,000	418,443	414,000	266,677
Appreciation	.....	.....	.....	125,395
	$7,135,825	$7,046,834	$7,512,293	$5,250,000

The estimated annual net income per year under the new rate is figured by the court below at $424,150.52 (p. 396). The court erroneously disallowed as a deduction the federal income tax amounting to $45,364, although the Commission had allowed it (p. 21). Since the decision of the court below it has been decided by this court that the tax is a proper deduction (**Galveston Electric Company vs. Galveston,** 258 U. S.—; U. S. Adv. Ops. 1921-22, 382). Consequently, for the purposes of this case and disregarding any other criticisms which the appellants might make of the court's figures, the anticipated net income may be stated to be not over $378,786.52.

This, however, is based on an annual deduction for depreciation of 2% of the undepreciated value of the property as found by the Commission, to-wit, $4,984,536 (pp. 32-33).

The undepreciated value as figured by the engineers is as follows:

Luick	$6,926,307	(p. 268)
Brinckerhoff	6,938,858	(p. 283)
Riggs	7,370,700	(p. 244)

The depreciation charge of only 2% figured on these valuations leads to a still further deduction of approximately

$40,000 from the net income leaving the latter somewhat less than $340,000.

The evidence shows that 8% is a fair return necessary to properly operate a business of this character (pp. 345, 369).

In its decision of September 22, 1920 (p. 331) the Commission said:

> "This Commission is of the opinion, after mature consideration, that a return on the fair value of the property and capital employed by applicant of eight per cent is reasonable and really needed to enable it to render to the public, under existing conditions, efficient and adequate service."

Professor Riggs agrees that, in order to be fair and reasonable, the rate must be not less than 8% (p. 245).

The appellants have recently arranged to borrow a considerable sum of money, the cost of which will be 8.3% (p. 325).

Even if only 2% is to be allowed for annual depreciation, the foregoing figures show that while the estimated return is over 7% on the Commission's valuation it is much less than 5% on the true, present day value of the property, and this without reference to any of the disputed items next to be considered.

THE DISPUTED ITEMS.

Besides being chargeable with having done again just what it frankly confessed (p. 54) that it did in 1918, namely, with having endeavored to arrive, not at actual values but

at **minimum** values, the Commission declined to give any consideration at all to items or elements of value which were urged upon it by the appellants. These items are, first, special franchise of the Company, and, secondly, losses incurred in 1917-1920. In addition it is claimed that the Commission allowed too small a percentage for annual depreciation.

THE SPECIAL FRANCHISE.

The franchise of the Atlanta Gas Light Company is of peculiar value. It was granted before the state reserved the right to repeal or amend such grants, and is held in perpetuity. Under it the Company has the right to lay and maintain its pipes in the public streets without the consent of the municipality. Such a franchise could not be granted today.

Gas Companies can now become incorporated under the laws of Georgia for a period of twenty (20) years and under a statute granting uniform powers and with the special right to amend or repeal at pleasure reserved by the State.

Under the constitution and laws of Georgia the franchise of the Atlanta Gas Light Co. is definitely declared to be personal property, and is taxed **ad valorem** like other property, being assessed for $300,000. This reflects an actual value in the neighborhood of $1,000,000. (pp. 297-298).

PAST LOSSES.

In the years from 1917 to 1920, inclusive, the appellants were, as has been pointed out, entitled in the opinion of the Commission to earn a net return of 8% on the value

of their property, that being a fair rate of return under conditions then existing (p. 331).

Under the rates fixed by the Commission, even on its valuation, the appellants failed to earn this return by about $1,000,000 and in 1920 actually conducted business at a substantial loss. These facts were not disputed (pp. 251, 256, 304, 305). These losses were not due to lack of demand for the product nor to extravagance or incapacity on the part of those conducting the business. They resulted from the inability of the appellants to fix their own prices. Thus, the rates fixed by the Commission turned out to be so low that appellants were actually deprived of a large amount of property to which they were entitled under the constitutional guaranties.

The Commission declined to take this matter into consideration (p. 22), and the court below, while agreeing that it was "within the discretion of the Commission to consider the experience of the immediate past in fixing a just rate for the future" held that the Commission violated no rights of the appellants in allowing nothing on this account (p. 394).

DEPRECIATION SHOULD BE 2½% INSTEAD OF 2%.

In accordance with the testimony of all the witnesses, including Professor Riggs, (p. 245) and the unbroken practice of the Commission in the past (pp. 330-2), the rate allowed for depreciation should have been 2½% instead of only 2%. The additional half of one per cent would further reduce the net income by $24,922.00, if applied to the Commission's own valuation and would reduce it by practically $35,000.00 on the valuation shown by the evidence.

SPECIFICATION OF ERRORS RELIED ON.

It is contended that the court below erred in sustainin the action of the Commission in the following particular

1. In fixing the valuation of the physical property of th appellants on the basis of its reproduction cost in 1914, plu the cost of additions constructed since, less depreciation.

2. In estimating working capital at only $266,677.

3. In disallowing the value of the franchise.

4. In allowing nothing on account of the losses in 191 1920.

5. In allowing only 2% as a deduction from gross incom on account of annual depreciation.

It is further contended that the court below erred in di allowing the federal income tax as a deduction, in estima ing the percentage of return which the new rate woul yield, and in not granting the injunction prayed for.

BRIEF OF ARGUMENT ON THE LAW.

I.

The Wrong Principle adopted by the Commission in Valuing the Physical Property vitiates its Findings.

The method adopted by the Commission, and approved by the court below, of arriving at the valuation of the gas properties of appellants is stated as follows in the written opinion filed by the Commission:

> "In our judgment the 'fair value' of this gas plant at this time for rate making purposes may be reasonably approximated by consideration, in the absence of any evidence as to original or historical cost, of replacement cost under normal conditions as of January 1, 1914, immediately preceding price disturbances by war, plus the actual construction cost of additions, extensions and betterments since that date" (pp. 18-19).

In the answer filed by the Commission the details of the computation are tabulated as follows (p. 30):

"Valuation of Gas Properties

Brinckerhoff—Jan. 1st, 1914, Reproduction new, physical properties	$3,897,992
Actual cost additional constructions, extensions, and equipment, Jan. 1, '14 to Dec. 31, '21, as reported by the Company:	
1914	55,489
1915	36,312
1916	65,074
1917	104,063
1918	69,082

1919	67,315
1920	213,444
1921	397,443
	$1,008,222
Total Atlanta	4,906,214
Decatur property as carried on Co.'s books	78,322
Total all physical properties	$4,984,536
Composite percentage condition—88.6%	568,237
Depreciated value	$4,416,299
'Going Concern Value'—10% Physical Property Value	441,629
	$4,857,928
Brinckerhoff 1914 working capital—$195,-163—Co. customers—23,704. 1921 customers 32,403—Same ratio as in 1914—$8.23 per customer—1921 working capital	266,677
Total value, including going concern value and working capital	$5,124,605
Plus allowance for appreciation	125,395
Estimated Fair Value	$5,250,000"

From the above quoted paragraph in the opinion it is evident that the Commission based its valuation on what it believed to have been the approximate cost of the property less depreciation. With respect to the great body of the physical property—namely that which was in existence on January 1, 1914—it ignored absolutely the great increase in reproduction costs since that day. Furthermore,

it valued the property in the dollars of 1914, admittedly worth very much more than the dollars of today (p. 274, 331). It made no attempt to base its valuation on the "higher plateau of prices" now prevalent and likely, according to all the testimony, to continue indefinitely in the future (see p. 7, supra).

Whatever the Commission said that it meant to do, it did in fact ignore the rule that values are to be determined as of the time of the inquiry. This rule, even if it means nothing more, necessarily means at least that the property of the appellants should have been valued in the depreciated dollars of 1921 and not at original cost figured in the dollars of 1914.

As the court below said, the Commission announced "correct rules" for ascertaining the value of the physical properties, but did not follow them (p. 394).

The court went on to say:

> "The Commission did not allow the appreciation claimed on the investment since 1914, nor did it deduct from the investments of 1919 and 1920 and 1921, which were nearly a million dollars their admitted reproduction loss, but it did allow the appreciation in market price of real estate. On the whole, averaging results and remembering that values are at last matters of opinion upon which witnesses and that of ourselves may be no better than that expressed by the Commission, we think no Constitutional wrong clearly appears."

The "appreciation in market price of real estate" to which the court refers amounted, as has been stated, to only $35,000 (see p. 15 supra).

What the court meant by "averaging results" is perhaps not quite clear, but if it meant that the decline in the reproduction cost of the extensions and additions since 1914, aggregating $1,008,222, equalled the appreciation since 1914 in the reproduction cost ($3,897,992) of the then existing physical property, it is certain that such a conclusion cannot possibly be sustained. The extensions and betterments were spread over a period of eight years, from 1914 to 1921 inclusive. During the earlier years of this period unit costs were much lower than in December, 1921. In 1918, 1919 and 1920, when the costs were higher, the amounts spent for extensions and betterments were in the aggregate only $349,841 and, although the property then acquired or constructed was almost new, it was depreciated by the Commission to the full extent of 11 4-10%, as was the cost, amounting to $397,443, of the property acquired during the very year of the inquiry, 1921. Clearly there was nothing excessive in the valuation put on these properties and nothing to offset any part of the wrong done the appellants by the grossly unfair valuation of the property existing in 1914.

The Commission disregarded the rules of valuation established by this court, in that it did not determine the value of the property as of the time of the inquiry, disregarded its reproduction cost as of that date, and went back to an estimate of pre-war costs figured in pre-war dollars.

A. In Rate Cases the Value of the Property is to be determined as of the Time of the Inquiry.

This proposition is so well settled as to require no discussion.

> "The proper base for rate making in the case is the fair value of the property, useful and used by the Company, at the time of the inquiry."

Houston vs. South Western Bell Telephone Company, 259 U. S.—(U. S. Adv. Ops. 1921-22, at p. 539).
"The base value considered is the present value."

Galveston Electric Company vs. Galveston, 258 U. S. —(U. S. Adv. Ops. 1921-22 at p. 387).

"That the Company is entitled to a fair return upon the value of the property at the time of the inquiry, is the rule."

Lincoln Gas & Electric Light Company vs. Lincoln, 223 U. S. 349, 358.

B. **Cost is not the Test.**

If the value of the property at the time of the inquiry is less than its cost, the Company cannot complain that the rate does not yield an adequate return upon the cost of the property.

San Diego Land and Town Company vs. National City, 174 U. S. 739, 757.

San Diego Land and Town Company vs. Jasper, 189 U. S. 439, 442.

Stanilaus County vs. San Joaquin C. & I. Company, 192 U. S. 201.

If, on the other hand, the value of the property has appreciated, a rate which yields a reasonable return on the cost is nevertheless confiscatory if it does not produce a fair return upon the present value.

"It is no longer open to dispute that under the Constitution 'what the Company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the

time it is being used for the Public'. * * * That is decided, and is decided as against the contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit on that footing over and above expenses."

San Diego Land and Town Company vs. Jasper, 189 U. S. 439, 442.

"The value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the Company is entitled to the benefit of such increase."

Willcox vs. Consolidated Gas Company, 212 U. S. 19, 52.

"It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment. If that has been reckless or improvident losses may be sustained which the community does not underwrite. As the Company may not be protected in its actual investment, if the value of its property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."

The Minnesota Rate Cases, 230 U. S. 352, 454.

And see

Houston vs. South Western Bell Telephone Company, 259 U. S.—(U. S. Adv. Ops. 1921-22, p. 537).

C. Reproduction Cost, less Depreciation, furnishes the Approved Measure of Valuation.

In the leading case of **Knoxville vs. Knoxville Water Company**, 212 U. S. 1, 14, Moody, J. referred to "ascertaining the cost of reproduction, diminished by depreciation" as the "plain method" of determining the present value of the Company's property.

Again, in **Des Moines Gas Company vs. Des Moines**, 238 U. S. 153, the court, in affirming a decree confirming the report of a master, quotes the following passage from the master's report, with apparent approval (p. 168):

> "It is not a question of what was actually expended therefor in the plant in question, but what it would cost to reproduce a similar plant at the present time. It is through this method we reach the present value of this plant new, and then when it is properly depreciated, according to the condition, life and age of its various parts, we reach the present value of the plant in its present condition. It is not a perfect method, but it is the best method therefor, and results as nearly as possible in giving the present value of the plant. No other method known has proved so satisfactory."

So, in **Denver vs. Denver Union Water Company**, 246 U. S. 178, 191, the court said that the propriety was established "of estimating complainant's property on the basis of present market values as to land, and reproduction cost, less depreciation, as to structures."

The theory suggested by some of the public service commissions and by a few of the state courts that, in arriving at values as a basis for rates, cost of reproduction is only one element and is simply to be weighed along with the original

cost and various other factors, is equivalent to saying that there is, in a case of this kind, no standard of value at all. Unless this result is frankly acknowledged,—as it cannot be without overturning the principles established by this court —reproduction cost at the time of the inquiry, regardless of the causes that have determined this cost so long as they are reasonably permanent, must be accepted as the test.

In **Consolidated Gas Company vs. Newton**, 267 Fed. 231 (District Court for the Southern District of New York) Learned Hand, J., said (pp. 236, 237, 238):

> "It must be owned that much of the discussion shows either a timidity or an inability to grasp any principle in dealing with the 'rate base.' With deference, it appears to me to be merely an abandonment of any attempt to deal intelligibly with the question to say that cost of reproduction and the original cost are each elements to be considered. That statement can mean nothing whatever, unless it is accompanied by a constitutive rule, which will establish some standard in the ascertainment of which these may be used. It would be understandable to say that the two estimates should be averaged but such a rule could obviously command no support, because it would correspond to no relevant considerations of policy. Merely to leave the question with a caution that several elements are to be considered is to abandon any effort to solve it.
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> * * * *
>
> "A profit based upon the enhanced value of the capital adds nothing in truth at all to the company's wealth though its capital be measured in more dollars, and so, too, its profit, that profit is still paid in the fallen dollar, and has no greater buying power than it had

before. The increased valuation of the capital will for the years of the depreciated dollar leave the company exactly as it was; it will merely prevent its being compelled to share its putative fair profit with its customers, which by hypothesis it should not be asked to do. The company gains nothing; the customers lose nothing.

* * * *

"Once it appears that the new price levels are not transitory, it is no answer to the company's complaint to say that at some future time prices may fall. When that time comes, if it does, the property must again be revalued; but meanwhile they are entitled to some protection, and since these have become questions for the courts, to the protection of the courts.

"The rule of the present reproduction cost, which is a necessary consequence of the foregoing argument, appears to me to have been either expressly or implicitly recognized in all the cases in which the Supreme Court has passed on these matters (citing cases). It is true that its application has not distinctly arisen since the recent rise in prices, but it is not possible that it should have general application, and yet not cover this, its most glaring illustration."

Judge Hand's decree in this case has recently been affirmed by this court. See **Newton vs. Consolidated Gas Company**, 42 Supreme Ct. Rep. 264.

D. **The Method of taking Pre-War Costs, Plus the Cost of later Additions, is Improper.**

The method of valuation adopted by the Commission in the present case, although it has not been expressly passed

upon by this court, has been repudiated by numerous state and lower federal courts.

> **St. Joseph Railway, etc. Company vs. Public Service Commission,** 268 Fed. 267 (D. C. W. D. Mo.)
>
> **Landon vs. Court of Industrial Relations,** 269 Fed. 433, 444 (D. C. Kansas).
>
> **Potomac Electric Power Company vs. Public Utilities Commission,** 276 Fed. 327 (D. C. Court of Appeals).
>
> **Public Service Railway Company vs. Board of Public Utilities Commissioners,** 276 Fed. 979 (D. C. N. J.).
>
> **Petersburg Gas Company vs. Petersburg,** 132 Va. —; 110 S. E. Rep. 533.

In the first of these cases it was held that a valuation of a public utility property made by a public service commission based on the original cost where that was ascertainable, and otherwise upon prices during the pre-war period, was not a reasonable method of fixing the valuation in view of the greatly increased costs since the war and of the greater rate of returns earned by other enterprises. In that case, wherever the original cost was not obtainable the Commission took the average prices for a period of five years before war prices prevailed, going back approximately to 1910. To this was added the cost price of additions and betterments since made. The complainant's figures were based on present day reproduction cost without depreciation. The court said (pp. 269-70):

> "It was conceded at the argument that complainant's figures were correct upon their theory and that the Commission's figures were substantially correct upon the theory upon which they proceeded; therefore, while

complainant's valuation may be too high, because no allowance is made for depreciation and elements of reduction uniformly recognized, nevertheless there must remain a very large amount of valuation to which complainant would be entitled unless the standard adopted by the Commission is the correct one, which would have a decisive effect upon the reasonableness of the return possible from the rates allowed by the Commission.

"It seems unnecessary to consider any phase of this case except that of valuation, because in my judgment that consideration is conclusive upon the reasonableness of the present rates.

"It is my judgment that the great weight of authority is against the adoption of a standard of original cost as a controlling basis for determining present value. . . . Nor do I think it permissible substantially to restrict the inquiry to a period ante-dating present cost prices. . . .

"It follows that the method of valuation adopted by this commission in the case at bar was wrong, and that the resulting computation necessarily reduced the total valuation of complainant's property so substantially as to make the rates based thereon inadequate and practically confiscatory. . . .

"It is sufficent that the procedure disclosed by this record leads unavoidably to the conclusion that the relief prayed for must be granted."

In **Joplin & P. Railway Company vs. Public Service Commission**, 267 Fed. 584 (D. C. W. D. Mo.), heard by three judges, the court said (p. 587):

"Nor can we say that the present period of high prices is so temporary or abnormal that it may prac-

tically be disregarded in arriving at the value of complainant's properties. No one can say what degree of depression may ultimately come, but it is reasonably certain that the cost of the properties now under consideration will never again approximate figures prevailing in the years before the world war."

In the case at bar the Commission held, in effect, that increased reproduction cost due to conditions incident to so abnormal an event as the world war is an exception to the general rule and cannot be taken into account. It is, of course, true that rates are established with some idea of permanency and that, if the value of the property at the moment a rate is established is inflated from some transitory cause, the rate is not necessarily confiscatory because it does not yield a full return on this inflated valuation. This court cannot, however, fail to take notice of the fact that the price level of the latter part of 1921, considerably lower as it was than the prevailing level of the preceding two or three years, was vastly higher than any pre-war level and seems to have become stabilized to a very considerable degree since 1921. All the evidence in the case was to the effect that the 1921 prices were likely to continue for an indefinite period (p. 7, supra).

It is not material that this change in price levels came about through the war and not through the less dramatic circumstances which are constantly affecting prices, often to a very great degree.

"It is a matter of common knowledge, that, owing principally to the world war, the costs of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital and en-

terprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future."

Lincoln Gas & Electric Company vs. Lincoln, 250 U. S. 256, 268.

If the inquiry in the case at bar had been made during the period of inflation which immediately followed the war, there might have been ground for saying that the reproduction cost ought to be discounted to allow for the deflation which always follows such a period. In that event, the ultimate object of the inquiry would have been, not to ascertain reproduction cost at that particular moment, but, as in **Galveston Company vs. Galveston**, 258 U. S. — (U. S. Adv. Ops. 1921-22, p. 382) to determine the price level or "plateau of prices" the stability of which might be assumed for an indefinite time. In the case at bar there was no pretense that the cost of reproduction, as of the time of the inquiry, was likely within any predictable period to be less than at that time.

E. **To Value Gas Property in 1921 in the Dollars of 1914 is palpably Unjust and Improper.**

The disregard by the Commission of the depreciation in the purchasing power of the dollar since 1914 was grossly unfair to the appellants. If the property in fact had the same intrinsic value in 1921 as it did in 1914 and prior thereto, it would unquestionably be improper to set its value today at the same number of dollars as in 1914. Even if all the opinion evidence in the case with regard to the increase in reproduction costs were to be completely disregarded, the change in the value of the dollar could not be

overlooked; and it happens that the percentage of depreciation in the value of the dollar, roughly speaking, is equivalent to the percentage of increase in reproduction cost as testified to by the witnesses.

In the recent case of **Elizabethtown Gas Company vs. Public Utility Commissioners**, 95 N. J. L. 18, Swayze, J., said (p. 19):

> "It would be manifestly unjust to apply to a gas company a standard of value different from that applied to others. To what extent the increase in prices may be due to an inflation of the currency, or to any particular cause, we do not know. What we do know is that the dollar of 1919, and the dollar of 1920 is worth less than the dollar of 1916, and still less compared with the dollar of the average year from 1911 to 1916. If it were proposed to value the property of the gas company in one hundred cent dollars and allow them a return only on that while other values were on the basis of fifty cent dollars and just double in number, everyone would see the injustice; so far as the increase in prices is due to inflation of the currency, the illustration is a perfect one."

Even in personal injury suits courts have taken judicial cognizance of the decreased purchasing power of the dollar and have sustained verdicts which in former years would have been regarded as excessive.

See cases cited in notes in 3 A. L. R. 610 and 10 A. L. R. 179, and 18 A. L. R. 554.

This phase of the question presented in the case at bar might, of course, arise in Germany in an extreme form. If we assume that a gas plant in that country cost ten

million marks to construct in 1914 what would be its value in marks today? Would any one fix it at ten million marks less depreciation?

The truth of the matter is that in its decision now under review the Commission was obviously actuated by the same purpose as when it made its decision of August 14, 1918, and frankly said:

> "We have not undertaken to arrive accurately at actual values, but have estimated minimum values" (p. 54).

Once again, the Commission followed its policy, declared in its last report to the Governor, of being more intent on keeping the Gas Company going, "with rates that would meet operating expenses, taxes and depreciation," than on "providing the reasonable returns which, under the law (it) had the right to demand" (p. 341).

F. Upon any Proper Valuation of the Physical Property the Return will be Insufficient, even without Reference to other Errors of the Commission.

As has been pointed out above (p. 17), the annual income of the Gas Company under the new rate, as estimated by the Commission and the court below, will yield the Company somewhat less than $340,000.

The valuation of the plant depreciated is placed by all the witnesses at over six million dollars without reference to the items, which must admittedly be included, of going concern value and working capital.

It is thus apparent that the net income, which will amount to less than 6 per cent of the value of the bare plant without

adding anything for going concern value or working capita and less than 5 per cent (see p. 17, supra) when those item are included, is insufficient to satisfy the appellant's consti tutional rights, and that the rates are confiscatory, even i the Commission was right in excluding from consideratio the value of the franchise and the matter of past losses.

II.

The Mistake in Valuing the Physical Property was re flected in the Estimate of Going Concern Value and th Amount allowed for Annual Depreciation.

The Commission recognized the necessity of allowing fo the "going concern value," in accordance with the decision of this court.

> **Denver vs. Denver Union Water Company,** 246 U S. 178, 191.
>
> **Des Moines Gas Company vs. Des Moines,** 238 U. S 153, 165.
>
> **Omaha vs. Omaha Water Company,** 218 U. S. 180 202.

Assuming that the Commission's estimate of a going con cern value as equivalent to 10 per cent of the value of th physical property was adequate, it is apparent that, if cor rect principles had been followed in valuing the physica property, the allowance for going concern value would hav been more than $600,000 instead of only $441,629 as fixe by the Commission.

Again, if the physical property had been rightly valued the annual allowance for depreciation would have been cor respondingly increased. Even adopting the unreasonabl low figure of 2 per cent of the undepreciated value, whic

the Commission allowed, the annual deduction from gross income would have been increased by approximately $40,000, as has been pointed out (p. 17, supra).

III.

The Allowance for Working Capital was figured on an Improper Basis and is wholly Inadequate.

Inasmuch as the Commission found that there was "nothing to criticise in the strictly operating reports of the Company" and that its gas business was "economically" managed (pp. 15-16) it would seem that the amount of working capital reasonably required could be ascertained from the books and not left to be dealt with as a matter of conjecture or opinion. The amount actually on hand and required at all times was so ascertainable and was placed before the Commission by the engineers, including Professor Riggs, all of them arriving at substantially the same figure.

Brinckerhoff testified that he made a personal examination of the books for the preceding twelve months and determined the actual amount of working capital which the Company had on hand each month. He testified (p. 284) that his examination enabled him "to determine that the actual storehouse account, plus the actual amount of money tied up in payrolls, and operating expenses, plus a bank balance for the carrying on of the business, and paying bills, amounted to $418,443. **"It is not a calculation but a compilation of actual figures from the books."**

Professor Riggs, whose figure was $414,000, described in detail the investigation which led him to that result (pp. 243-244).

As has been pointed out (pp. 13, 14, supra), the Commission's figure of $266,677 was arrived at by obviously

unsound reasoning. As the amount of working capital found by Brinckerhoff in 1914 amounted to $8.23 per customer the Commission merely multiplied the number of customers in 1921 by $8.23, thus disregarding completely the great increase in the cost of everything and the shrinkage in the value of the dollar. The unfairness of such a method of computation need not be dwelt upon further.

IV.

Without Reference to further Errors of the Commission the new Rate is shown to be Confiscatory.

The facts and figures showing that the new rate will not yield a sufficient income have been set forth above (pp. 16, 17), and need not be repeated here. From the statement there made it appears that even if the Commission was right in ruling against the appellants on the points remaining to be considered the rate of return will be less than 5 per cent upon the fair value of the property.

V.

The Value of the Franchise should have been included in the Valuation.

The franchise in question is not the franchise to be a corporation or the right to carry on the business of the public utility company but it is a special street franchise granted by the state in 1856 (pp. 297-298). It is perpetual. It permits the use for maintaining gas mains of the streets, alleys, and all public places of the city of Atlanta, without permit or consent on the part of the municipality.

City of Atlanta vs. Gas Light Company, 71 Ga. 106.

Such a special franchise is a grant by the state of an easement in streets, alleys and other public places. Wheth-

er paid for in money or not, it is a valuable property right. If the state of Georgia had, in 1856, given a tract of public land to the Atlanta Gas Light Company for the purposes of its gas business, such land would be property, the value of which would necessarily be included today in a valuation of the property of the company for rate purposes. It is submitted that there is no sound distinction between property of that character and the franchise now in question.

This court has held, over and over again, that a franchise is property and has all the attributes thereof.

> "A franchise is property, and nothing more; it is incorporeal property. * * * * It is its character of property only which imparts to it value, and alone authorizes in individuals a right of action for invasions or disturbances of its enjoyment."
>
> **West River Bridge Company vs. Dix**, 6 How. 507, 534.

If a franchise is taken by eminent doman, it must be paid for.

> "If a man's house must be taken, that must be paid for, and, if the property is held and improved under a franchise from the state, with a power to take tolls, that franchise must be paid for, because it is a substantial element in the value of the property taken."
>
> **Monongahela Navigation Company vs. U. S.**, 148 U. S. 312, 337.

Franchises of the kind under discussion are assignable, taxable, have all the attributes of property and as such are within the protection of the constitution.

State Railroad Tax Cases, 92 U. S. 575, 606.

Louisville vs. Cumberland Telephone & Telegraph Company, 224 U. S. 649, 661.

Owensboro vs. Cumberland Telephone & Telegraph Company, 230 U. S. 58, 65.

Boise Water Company vs. Boise City, 230 U. S. 84, 90.

Russell vs. Sebastian, 233 U. S. 195, 204.

New York Electric Lines vs. Empire City Subway, 235 U. S. 179, 192-193.

Los Angeles vs. Los Angeles Gas Corporation, 251 U. S. 32.

In **Louisville vs. Cumberland Telephone & Telegraph Company**, the Court said (224 U. S. at p. 661):

> "While franchises to be are not transferable without express authority, there are other franchises to have, to hold, and to use, which are contractural and proprietary in their nature and which confer rights and privileges, which can be sold wherever the company, as here, has power to dispose of its property. In the present case the Ohio Valley Company was, by its charter, given authority to mortgage and dispose of franchises. Among those thus held was the right to use the streets in the city for the purpose necessary in conducting a telephone business. Such a street franchise has been called by various names—an incorporeal hereditament, an interest in land, an easement, a right of way—but, howsoever designated, it is property. * * * * Being property it was taxable, alienable and transferable."

In the Boise case (230 U. S. at p. 90), the Court said:

> "The right which is acquired under an ordinance granting the right to a water company to lay and

maintain its pipes in the streets is a substantial property right. It has all of the attributes of property. It is assignable and will pass under a mortgage sale of the property and franchises of the company which owned it."

The fact that the street franchise of a public service company is not paid for in money does not mean, if the point can possibly be regarded as material in a rate case, that it is to be treated as having been obtained as a mere gift, without consideration. Such franchises are not "nude pacts," but rest upon obligations expressly or impliedly assumed to carry on the undertaking to which they relate."

New York Electric Lines vs. Empire City Subway, 235 U. S. 179, 193.

It is obvious that such franchises are assets of great value to utility companies and form "a principal basis for credit".

Owensboro vs. Cumberland Telephone & Telegraph Company, 230 U. S. 58, 65.

In the legislation of Georgia, franchises of this character are fully recognized as property, as the following paragraphs of the Civil Code illustrate:

Sec. 1019. **"Special Franchise Defined.** The term 'special franchise,' as used in this Article, shall include every right and privilege exercised within this state, granted to any person, partnership, or corporation by the state or its authority, or by any county or county officer, or officers, or any municipal corporation or officer thereof, for the exercise of the power of eminent domain, or for the use of any public highway or street, or the land above or below any highway or street within the limits of said state, and every special right ex-

ercised within this state, granted by charter, resolution, by law, statute, or otherwise, whether under the laws of this or any other state, for the exercise of any public service, such as * * * the construction or operation of any plant or plants for the distribution and sale of gas, * * * and every other like special function dependent upon the grant of public powers or privileges not allowed by law to natural persons or involving the performance of any public service, not including the mere right to be a corporation by trading or manufacturing, or other corporation exercising no special franchise above enumerated."

Sec. 1020. **"Returns to Comptroller General.** On or before the first day of May in each and every year, every person, partnership, or corporation holding or owning and exercising any special franchise or franchises within the State of Georgia shall make a special return, sworn to by such person or member of such partnership, or by the president, vice-president, or secretary of such corporation, to the comptroller-general, stating the value of said franchises as exercised within this state, and particularly describing the same."

Sec. 1021. **"Value of Franchises, How Ascertained and Taxed.** The comptroller-general shall not be bound to accept the valuation assigned to such franchises in the return made, but it shall be his right and duty to review the same, and in case of his refusal to accept the return, the subsequent proceedings shall be in all particulars the same as are now provided by law in case of his refusal to accept the returns made by railroad companies of their physical property, and said franchises shall be taxed at the same rate as other property upon the value thereof returned, or, if the value returned is not accepted, upon the value as above

ascertained, the tax to be levied and collected as now provided in case of the property of railroad companies."

Sec. 1023. **"Valuation, How Apportioned.** The valuation for taxation of such franchises in each county and municipality through which said franchise is exercised, shall be apportioned for each county and municipality as is now provided by law for the apportionment of the personal property of railroad companies."

Sec. 1024. **"Comptroller-General Shall Certify Name of Franchise and Amount Due.** The comptroller-general shall certify to every such municipal corporation and the taxing authorities of every such county the name of every special franchise taxable within such municipality or county, and the amount of taxes due on the same to such municipal corporation or county, as now provided by law in the case of railroads."

Sec. 2926. **"Franchises Considered as Assets, When.**

Whenever any private corporation, created under any general or special law of this state, shall become insolvent, and its assets be the subject of administration by the court, the franchises possessed and enjoyed by such corporation in virtue of its charter or order of incorporation shall be considered assets, and the same may be sold, under order of the court, through a receiver or otherwise."

Sec. 5207. **"Payment or Tender of Compensation.** If said corporation or person cannot by contract procure the land, easement, right of way, waterway, franchise, or other interest or property useful, needful, and necessary for such purposes, and authorized by law to be taken or damaged, then it shall be lawful for said

corporation or person to take or damage said property, upon paying or tendering to the owner thereof just and adequate compensation for the land, franchise, or other interest or property so to be taken or used."

Sec. 6464. **"Right of Eminent Domain; Police Power.** The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as property of individuals."

Under Sec. 1021, the Comptroller-General values the franchise of the Atlanta Gas Light Company for taxation purposes at $300,000, which, in the light of the proportion between the assessed value and the real value of other kinds of property in Georgia, indicates a real value of approximately $1,000,000. (p. 298.)

There seems to be no logical reason why the value of franchises should not be included in a valuation for rate purposes; and indeed it has been several times decided that they are properly to be included.

Willcox vs. Consolidated Gas Company, 212 U. S. 19.

Spring Valley Waterworks Company vs. San Francisco, 124 Fed. 574.

Joaquin and Kings River Company vs. Stanislaus County, 191 Fed. 875.

Louisville & Nashville Railroad vs. Railroad Commission, 196 Fed. 800.

In the case at bar the Commission declined to value the franchise on the ground that, though it is taxable and taxed,

"the taxes paid thereon are repaid to the company in the rates it charges the public." (p. 20.)

This reasoning would apply to all the taxable property of the company, and plainly furnishes no ground for excluding a particular species of property from a valuation for rate purposes.

In sustaining the action of the Commission the court below said:

> "That the charter is a contract upon sufficient consideration, that the franchises granted under it are private property vendible and taxable as such cannot be disputed. That they may not be taken from the owners for public purposes or used adversely to the owners for such purposes without just compensation will not be denied. But the fixing of a just and reasonable charge to be made by a public service corporation is neither the taking from it of its franchises nor the use of them in the sense of the Constitution." (p. 391.)
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> * * * *
>
> "We conclude that complainants are deprived of no constitutional right because their simple franchise to do business, which is all their charter gives them, even if it be perpetual as claimed, has not been valued as property whose use is taken from them." (p. 393.)

It is not the "simple franchise" to do business which the appellants claim should have been included in the property valued, but the franchise rights in the streets which are of a very different character.

The theory of the court that while a franchise may not be taken by eminent domain without compensation it may

nevertheless be omitted from consideration in fixing rates is, it is submitted, unsound. The taking of the use of property without compensation is as much forbidden by the Fourteenth Amendment as is the taking of the property itself.

Under the Constitution a public utility company is entitled to a fair return upon the present value of all its property, tangible and intangible. The street franchises of a gas company are assets of great value and, as this court has said, furnish "a principal basis of credit." No sufficient reason appears for excluding such franchises from consideration.

The fact that no money may have been paid for a franchise does not furnish a plausible ground for omitting it from consideration. In the first place, no such principle is applied to the property of other kinds which may have been donated to a public service company. In the second place, as this court has pointed out, a franchise is not a "nude pact." The many obligations which the acceptance of the franchise imposes upon its holders constitute a consideration for it and take it out of the class of free gifts.

If the property of a gas company is sold to another public utility company a large sum may be paid for the franchise. In such a case has the new company no right to earn a return upon that part of the property acquired?

If it be argued that the franchise in question is a right to use the streets for the purpose of obtaining a reasonable return and so ought not to be taken into account in valuing the property upon which the reasonable return is to be earned, the answer is that if the argument were sound it would result in excluding from consideration all the property of a public utility. So far as the fact that the rates

charged must be reasonable affects the value of the franchise, it affects in like manner all the property of the company and furnishes no warrant for disregarding the value of the franchise in arriving at the rate base.

It is true that in **Galveston Electric Co. vs. Galveston,** 258 U. S.—(U. S. Adv. Ops. 1921-22, at p. 386), the court says:

> "But in determining whether a rate is confiscatory, good will and franchise value were excluded from the base value in **Cedar Rapids Gaslight Co. vs. Cedar Rapids,** 223 U. S. 665, 669, and **Des Moines Gas Co. vs. Des Moines, 238 U. S. 153.**"

The cases cited in this passage, however, deal with the contention that the fact that the utility is a monopoly should be considered in arriving at the rate base. The court did not, it is apprehended, mean to suggest that the franchise ought not to be valued if considered, not as a right to exclude others from competition, but simply as an easement standing on the same basis as all other real estate used in connection with the business.

Even in the absence of evidence as to the pecuniary value of the franchise in question, the court could not but take notice of the fact that a perpetual, irrevocable franchise to maintain pipes, etc., through a city like Atlanta is a most important asset and that if the Commission improperly disregarded it in valuing the property, the rate base fixed by them is vitiated.

VI.

Past Losses should have been taken into Consideration.

It is undisputed that, under rates fixed by the Commission, the company suffered in the years from 1917 to 1920

inclusive a loss of substantially $1,000,000 caused solely by the inadequacy of the rates even when figured upon the "minimum value" placed upon the property by the Commission.

A full and adequate argument in support of the proposition that the losses should be made up to the appellants is contained in the brief filed in this case by Mr. Chamberlain as **amicus curiae**, and the question consequently need not be argued here.

The record shows that the appellants were continuously appealing to the Commission during the years in question to increase the inadequate and confiscatory rates prescribed by the Commission. The losses sustained resulted entirely from the necessity of proving the inadequacy of a rate by showing losses actually incurred, delays of the Commission in granting relief and the total inadequacy of the relief afforded. Unless these losses are in some way made up the appellants have obviously been deprived of a large amount of property in violation of the Fourteenth Amendment.

VII.

The Court below improperly disallowed the Federal Income Tax as a Deduction from gross Income.

The Commission assumed that the federal income tax, like all other taxes, should be deducted in arriving at the net income which the rate in question would produce. The court below held that this should not have been done and treated the supposed error in favor of the plaintiffs as offsetting several obvious errors against them. No discussion is necessary to demonstrate that in this respect the Commission was right and the court wrong, since the precise point has since been dealt with by this court.

"It is necessary to deduct from gross revenue the expenses and charges; and all taxes which would be payable if a fair return were earned are appropriate deductions. There is no difference in this respect between state and federal taxes or between income taxes and others."

Brandeis, J. in **Galveston Electric Co. vs. Galveston,** 258 U. S. (U. S. Adv. Ops. 1921-22, at p. 388).

See

Consolidated Gas Co. vs. Newton, 267 Fed. 231, 258 (affirmed on appeal, 42 Sup. Court Rep. 264).

Home Telephone & Telegraph Co. vs. Public Service Commission, P. U. R. 1922 B., 478.

VIII.

Upon the Evidence the Court should have issued the Injunction prayed for notwithstanding that there had been no actual Trial of the Rate.

Where a public service commission has made an effort to value all of the property of a utility and correct principles have been followed in the valuation, and the principal controversy concerns the amount of net income which will be realized from the new rate and whether or not it will prove to be confiscatory, the propriety of awaiting the result of experence is often manifest.

On the other hand, if as here, there is in reality no controversy as to the amount of net income which the new rate will yield, and it appears that the property has been valued by improper methods resulting in a gross under-valuation, the reason for testing the rate by experience is absent.

Nothing can be made of the point that, admitting the undervaluation, the rate may nevertheless in the future turn out to yield an adequate income upon the full value of the property rightfully determined. It cannot be assumed that the rate established by the Commission is more than a reasonable rate upon the basis of the value fixed by the Commission. If it should prove to be the Commission would at once reduce it, and the promptness with which this Commission acts in such circumstances is shown by recent experience.

If this court should hold that it did not appear that the proposed rates would produce a sum which would be inadequate, when applied to a valuation determined as the appellants contend it should be determined, the Commission would at once lower the rates so as to produce only a fair return upon the valuation as determined by it. This is not conjecture: it is the clearly asserted policy of the Commission. If the methods by which the Commission has proceeded are erroneous and improper, it is submitted that the Commission should now be so advised. The Commission itself appreciates the desirability of this and is anxious that the questions presented by this record should be decided. In a motion to advance the case, in which the Commission has joined, there is this statement:

> "The matters here involved are of great public interest, in that these same questions are involved in a very large per cent of the cases before Public Service Commissions and the determination of these questions is of pressing importance not only to the public service corporations, but to the State as well.
>
> "The Railroad Commission of Georgia has now pending before it a number of cases wherein are involved the identical questions above stated, and it is of vital

importance to this State tribunal that these questions be speedily settled so as to avoid the danger of a series of suits involving these same questions.

"The importance of a speedy hearing of this case is such that this application to advance is joined in by both parties to the record."

Respectfully submitted,

L. Z. ROSSER,
Atlanta, Ga.,

JACK J. SPALDING,
Atlanta, Ga.,

WALTER T. COLQUITT,
Atlanta, Ga.,

ROBERT G. DODGE,
Boston, Mass.,

J. PRINCE WEBSTER,
Atlanta, Ga.,

LINTON C. HOPKINS,
Atlanta, Ga.,

Attorneys for Appellants.

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IN THE

Supreme Court of the United States

GEORGIA RAILWAY AND POWER COMPANY,
AND
ATLANTA GAS LIGHT COMPANY,
Appellants,

vs.

THE RAILROAD COMMISSION OF GEORGIA, ET AL.,
Appellees.

No. 298
October
Term
1922

STATEMENT OF THE CASE.

The Georgia Railway & Power Company, and the Atlanta Gas Light Company filed a bill against the Railroad Commission of Georgia and others to enjoin the enforcement of an order of said Commission fixing the rates of the Atlanta Gas Light Company, effective January 1st, 1922.

The said order was attacked by the Complainants on various grounds, to-wit:

(a) That the value placed upon the property of the Gas Light Company was arrived at by unfair and illegal methods, and said order was illegal and confiscatory.

(b) That the amount allowed by the Commission for going concern value was too small.

(c) That the amount allowed by the Commission for working capital is too small.

(d) That the Commission should have allowed something for the value of the franchise.

(e) That the Commission should not have excluded from the valuation of the property of the Gas Light Company the item claimed to have been lost by it in former years by reason of the low rates fixed by the Commission for these years, but that this item, amounting to $1,000,000, should have capitalized and added to the values of its property, or ammortized and provided for in rates allowed over a reasonable number of years.

(f) That the rate fixed by the Commission will not allow the Gas Light Company to earn eight per cent upon the value of its property.

(g) Because the amount allowed for depreciation was too small.

(h) That the rate fixed was so low that the Gas Light Company could not earn a reasonable per cent of income on its property, and that the said order was confiscatory.

An order to show cause was granted, and a temporary restraining order also granted (R., 23-24). The case came on to be heard on motion for a preliminary injunction. After hearing before three judges, a preliminary injunction was refused. (R., 396).

The Gas Light Company thereupon appealed directly to this Court. (R. 396-398, 402-403.)

BRIEF OF ARGUMENT.

Power of Commission to Fix Rates.

It will be conceded that the Railroad Commission of Georgia has the power and authority, under the law, to make rates for the service rendered the public by the Complainant, as a public utility corporation, and that it has the sole power to prescribe rates, the only limitation placed upon it being that it must fix just and reasonable rates. We suppose that it will also be conceded that the courts have no power to make rates, and no power to interfere with the fixing of the rates by the Commission, unless the rates are so unreasonable and unjust that the result of their operation will amount to the confiscation of the Company's property, and the taking of its property without the due process of law. The burden of proving that the rates are confiscatory and so unreasonable as to amount to the taking of property without due process of law, is upon the complainant. The rates prescribed by the Commission are presumed to be just and reasonable and the burden is upon the complainant to show to the contrary. This has been decided in the following cases:

Central of Georgia Railway Co. vs. McLendon, et al., 155 Federal Reporter, page 974.

Minneapolis and St. Louis Railroad Co. vs. Minnesota, 186 U. S., page 964.

VALUE OF THE PROPERTY OF THE GAS LIGHT COMPANY.

It is insisted by the complainant that the Commission arrived at an erroneous conclusion as to the value of its property, and that in estimating the value of the property, the Commission adopted illegal and improper methods. The general rule seems to be that the Company is only entitled to a fair return upon the value of that which it employs for the public convenience, and on the other hand what the pub-

lic is entitled to demand is that no more be exacted from it than the service rendered is reasonably worth.

While agreeing that the value of the property is to be taken as the basis for fixing the rates generally, the parties to this case differ widely as to the proper method of arriving at the value of the property employed by the Company in its business. The complainant contends that the proper and only correct method, is to ascertain the cost of reproducing the property, less depreciation, while the Commission contends that the correct method is not to consider the cost of reproduction less depreciation alone, but by taking this into consideration, along with many other elements that properly enter into the question of value, and to arrive at the proper value from all of these.

We insist that it has never been decided by the courts that the Commission was bound to fix the rates on the basis of the cost reproduction less depreciation alone.

The case of Smythe vs. Ames, 169 U. S., page 466, seems to be the leading case on the subject, and in that case the court said:

> "We hold, however, that the basis of all calculations as to the reasonableness of rates must be the fair value of all property being used for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the past cost of construction, the probable earning capacity of the property under particular rates prescribed by the statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such consideration and weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the Company is entitled to ask is a fair return upon that which it employs for

the public convenience. On the other hand what the public is entitled to demand is that no more be exacted of it than the services are reasonably worth."

In the Minnesota Rate Case, 230 U. S., page 430, the court said: "The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

In the case of Galveston Electric Company, Appellant, vs. The City of Galveston, O. H. Sappington, Mayor of the City of Galveston, J. C. Purcell, et al., Commissioners, Appellees, No. 455, October Term, 1921, of this Court, (Decided April 10, 1922), the court, in estimating the reproduction costs refused to use as a basis the prices actually prevailing at the time of the hearing, as these had risen to 110 per cent above those of 1913, and this court approved the finding.

It would be manifestly unfair, in the present case, to exclude from the consideration of the value of this Company's property every factor except that of reproduction as of the date when the estimates of the value were made by the Company's experts, using unit costs of those dates, for at that time prices of everything were abnormally high on account of conditions resulting from the world war, such as never existed before, and doubtless will never exist again. Everything that would enter into the reproduction of the property was abnormally high at that time, and prices of these articles have since declined, and are still declining. There is a sharp conflict in the evidence, even of the experts as to the value of the property.

A. J. Luick, an expert employed by the Company estimated the value, including working capital and going value at $7,525,750, to which he added $567,457 for financing, making a total of $8,093,207. He valued the property at $6,-

100,750, the working capital at $425,000, and the going value at $1,000,000. He states that he took the valuation of 1914 and estimated the additions and increases in value since and brought it down to 1921. (R., 266-274.)

Henry M. Brinckerhoff, an expert employed by Bankers to make an estimate of the value of the property for loan purposes, estimated the value including working capital and going value at $7,144,000. (R., 285-290.) This witness was recalled later and said that he had made an estimate of the value in 1914, and that the value in 1921 was estimated to be 70% higher than in 1914. (R., 316.)

He had previously stated that the value placed upon the property by him in 1914 was $4,201,088, including working capital $195,163, and going value $528,916. (R., 36.)

Dr. Riggs, an expert, employed by the Railroad Commission estimated the value of the property at $5,299,435, in this sum is included going value $444,130, and working capital $414,000. (R., 242-243.)

The Railroad Commission estimated the value to be $5,250,000, in this sum included $441,629 for going value, and $266,677 for working capital. (R., 19-20.)

The Complainant alleges in its petition that the value is $7,500,000, including going value and working capital. (R., 8.)

The estimates placed upon the Company's property as of 1921, are manifestly too high, in that they were made at a time when the prices of all articles entering into the supposed reproduction were abnormally high, which prices, as to many of the articles have since very materially declined, and are still declining. The fact that prices, according to the undisputed evidence in the case, had advanced 70% from 1914 to 1921, shows unusual conditions. These

conditions grew out of the war, and have never happened before, and are not likely to ever occur again. It was a world upheaval, and prices of all commodities mounted mountain high. It would be unfair to the patrons of the Gas Light Company to use these inflated prices in fixing the value of the Company's property. In the case of Galveston Electric Company vs. City of Galveston, (supra), this Court said: "As to the base value of the property, the master and court took, instead of the prudent investment value, the estimated cost of reproduction at a later time less depreciation; and in estimating reproduction costs both refused to use as a basis the prices actually prevailing at the time of the hearings. These had risen to 110 per cent above those of 1913."

The judgment of the District Court in that case was affirmed.

In the instant case the price had risen 70% above those of 1914, and should not have been used as a basis in estimating reproduction cost.

GOING CONCERN VALUE.

The Complainant also claims that the amount allowed by the Commission for going concern value was too small. As compared with the allowance of the expert witnesses, except Mr. Luick, who fixes it at $1,000,000, the amount allowed by the Commission is not unreasonably small. The amount allowed was ten per cent of the value of the naked physical property, and under all the circumstances of the case we insist that this sum was not unreasonably small.

WORKING CAPITAL.

The Complainant also claims that the amount allowed by the Commission for working capital was too small.

The Commission stated in fixing this sum that it had usually estimated the amount to be allowed for working capital to be ten per cent of one year's gross revenue, but under prevailing conditions at that time they deemed it too small and allowed more, making it $266,667. (R., 19.)

One of the main reasons for allowing anything for working capital is that the Company has to carry the accounts of its customers for periods of thirty or sixty days. In this connection we desire to call the attention of the Court to the fact that a discount of 10 cents per 1,000 cubic feet was allowed the customers if they paid their bills before the 10th of the month. (R. 14.)

We submit that the Complainant has not made it appear from the evidence that this sum allowed for working capital is unreasonably low.

ALLOWANCE FOR VALUE OF FRANCHISE.

The Complainant also contends that there should have been included in the rate base large values for its franchises.

The Commission in disallowing this item calls attention to the fact that the original franchise was granted by the State Legislature without charge, and says further: "These franchises, it is true, are taxable and are taxed as property, but it is also true that the taxes paid thereon are repaid to the Company in the rates it charges the public.

The public having granted these franchises in order that it might be served should not be required to pay a return on them as Company property in addition to returning to the Company every dollar of taxes it pays. The public taxes the Company; the Company charges the tax back to

the public and the public repays it in rates. It seems to us that the process should stop at this point." (R., 20.)

This reasoning of the Commission occurs to us to be sound, and we insist that the Commission did not err in disallowing the value of the franchise in arriving at the proper value. Especially in view of the fact there is no law that requires them to take into consideration the value of the franchise. That the value of the franchise should not be included in the rate base has been decided in the following cases:

City and County of Denver vs. Denver Union Water Co., 246 U. S., 184.

Cedar Rapids Gas Light Co. vs. Cedar Rapids, 223 U. S., 665, 669.

Des Moines Gas Co. vs. Des Moines, 238 U. S., 153.

Galveston Electric Co. vs. Galveston, (supra).

AMORTIZATION OF ALLEGED LOSSES IN THE PAST.

The Company claimed that it suffered losses in its gas department in former years under the rates prescribed by the Commission, and that new rates should have been prescribed through a course of years to reimburse it for these losses. We know of no law that requires the Commission to do this. It would be manifestly unfair to the present and future patrons of the Gas Company to allow it rates high enough to yield a reasonable return on its investment, and also enough to reimburse it for losses sustained in the past. This would be confiscation of the property of these patrons.

It has been held by this Court that this should not be done.

In the case of Galveston Electric Company vs. City of Galveston, et al., (supra), this Court said: "The fact that a utility may reach financial success only in time, or not at all is a reason for allowing a liberal return on the money invested in the enterprise; but it does not make past losses an element to be considered in deciding what the base value is and whether the rate is confiscatory. A company which has failed to secure from year to year sufficient earnings to keep the investment unimpaired and to pay a fair return whether its failure was the result of imprudence in engaging in the enterprise, or of errors in management, or omission to exact proper prices for its output, cannot erect out of past deficits a legal basis for holding confiscatory for the future, rates which would, on the basis present reproduction value, otherwise be compensatory",
Citing the case of Knoxville vs. Knoxville Water Co., 212 U. S. 1, 14

If the Company was losing money, as it alleges, every year from 1917 to 1920, inclusive, it should have demanded of the Railroad Commission such increase in rates as would have been sufficient to prevent these losses. And if the Commission had refused it relief it could have appealed to the courts, as it is doing now. It could just as easily have obtained relief from the courts in 1917, 1918, 1919 and 1920, as in 1922.

AS TO COMPANY'S RIGHT TO EARN EIGHT PER CENT.

Company complains that the rates prescribed will not provide sufficient income to enable it to earn eight per cent on its capital invested.

The Railroad Commission has never said that this Company was entitled to earn eight per cent under any and all conditions, and if it had said such a thing it would have gone far beyond the authority conferred upon it by law.

What it did say was that the Company was entitled to a return of eight per cent at the time when the order was passed under then existing conditions, and that the rates then fixed would yield eight per cent. The Commission in deciding on an eight per cent return cited the then abnormal conditions, among other things being the statement that private business was then yielding from eight to ten per cent. (R. 88-89.) In the instant case there was no evidence as to what per cent other business was yielding in Atlanta at the time the order of the Commission complained of was passed, that is December 30th, 1921, except that some idea of the general slump in business, and the probable income from other business at that time, may be gathered from certain excerpts from the 48th report of the Railroad Commission, made in 1921, as follows:

During the last six months only has there been much question by the public as to the justness and reasonableness as to the increases granted by the Commission. During this period, cotton, our principal state product, has slumped tremenduously in selling price. The purchasing power of by far the largest class of our population has been reduced to almost nil. Our manufacturers and merchants were caught with large stocks of high priced materials and high cost merchandise in shop and store, unable to sell their products and goods at costs, and unable without causing distress, to collect for such sales as had been made in the spring and summer of 1920. Business in Georgia, as elsewhere, came to a halt and stagnation resulted. Business forgot all the years of plenty and high tide of unrestrained profit and liberal expenditures, for every gratified want, and criticism of every increase in the cost of living, however small, naturally became rife. It was a psychological resutlant. Patrons of the utility at once said we are making nothing; many of us are actually losing money and only carrying on our business, or running our factories to keep our organizations together. Why should the utilities be allowed to earn

six, or seven or eight per cent; why should they not share losses with the general public? The Commission heard these arguments week after week; some of its members, at least, have business interest which have been affected like these and have had a large degree of sympathy with the suggestions thus presented". (R. 340-341.)

Although strenuously insisting on its right to rates sufficient to earn eight per cent on December 30th, 1921, and attempting to hold the Commission to its ruling on this question in 1920, the Complainants, on the hearing of the instant case failed to show the court what per cent all other business was earning at that time. But the Commission introduced evidence, in the shape of a letter from Mr. Jos. A. McCord, of the Federal Reserve Bank in Atlanta, that the discount rates for money at that Bank had declined from 7 per cent on January 1st, 1921, to 5 per cent on December 19th, 1921, a difference of 2 per cent in less than one year. (R. 388-389.) With the rate of interest falling at this rapid rate it seems unreasonable to say that this Company must earn eight per cent, and that a less rate would amount to confiscation.

DEPRECIATION.

The Company also complains that the Commission did not allow enough for depreciation. The Commission stated that in allowing only 2% for current depreciation it based its conclusion largely on the testimony of Mr. Luick. (R. 21.) We submit that the Complainant has not shown that this conclusion is wrong.

RATES NOT CONFISCATORY.

The Complainant charges that the rates fixed by the Commission are confiscatory. We submit that it has not shown them to be confiscatory, and that in point of fact

they are not confiscatory. Complainants also charge that the calculation as to the earnings of the Company for the months of July to November inclusive made by the Commission are incorrect for the alleged reason that the Commission took into consideration gas that had been sold at the higher rate of 1.90, and also failed to allow the prorata rate for depreciation. This contention is without evidence to support it. The only gas taken into consideration in this calculation was sold during the months of July, August, September, October, and November, 1921, and the 1.90 rate expired by limitation on the first day of June, 1921. The order reducing the rate from 1.90 to 1.65 expressly stated that the latter rate should go into effect June first. Therefore all gas sold after June first was sold at the 1.65 rate. The calculation shows on its face that the Commission made an allowance for depreciation, which was added to the operating expenses and taxes, and the whole amount deducted from the gross earnings to get the net earnings. (R. 22.)

This is the statement upon which the calculation is based.

1921.	Sales, c. f.	Gross Revenue	Op. exp., taxes, and depreciation
July	91,547,500	$156,710.49	$122,426.93
August	100,358,600	166,570.65	129,737.29
September	101,012,300	169,940.49	124,686.29
October	103,131,900	173,987.46	134,244.26
November	112,157,500	186,172.46	138,474.79
Total, 5 Mos.	509,007,800	$853,381.55	$649,569.56

Net earnings for five months, $203,811.99, which is $489,-144.40 for one year. This calculation is based on a 1.65 rate, calculating on a basis of 1.55, the rate under review in this

case, the net earnings for the year 1921 would be approximately $459,000.00, which would yield

4.8% on $9,500,000
5.4% on 8,500,000
6% on 7,500,000
8.7% on 5,250,000

In making this estimate the five months selected were not fair average months, for the sales as well as the earnings were larger for the other months in the year. We have made another calculation for the months of March, April, May, and June, 1921. (There is no evidence in the record from which the net earnings can be obtained for the months of January, February, and December, 1921.) The net earnings for March, April, May and June amounted to $270,567.28. (R. 376-378.)

These were figured on a 1.90 rate, calculating the earnings on a 1.55 rate, the amount would be $220,782.90 for the four months. Add to this sum the net earnings for the months of July, August, September, October and November, calculated on a 1.55 rate, $191,583.20, we find the net earnings for the nine months on a rate of 1.55 to be $412,376.10, or $549,834.72 for one year. This would yield 5.7% on $9,500,000, the very largest valuation that the Company claims, including $1,000,000 for its Franchise, and $1,000,000 for its losses in past years. It will yield 6.4% on $8,500,000, the highest value claimed by the Company, including $1,000,000 for its Franchise. It will yield 7.3% on $7,500,000, the highest value that the Company claims on its property, excluding the Franchise and the claim for past losses. It will yield 10.4% on $5,250,000 on the value placed on the propery by the Commission. And even this calculation does not arrive at the real earnings for there is three months of the year that is not taken into the calculation at

all, and me may safely assume that the earnings for those months were larger than those for either of the other nine months, for the reason that they are the first three of the winter months, and the gas consumption is greater in the winter months by reason of the fact that more is used for heating purposes in these months, besides the record shows that in 1921 there was a steady increase in the amount of gas sold from July to November, there being an increase in November over July of 22 per cent, and an increase in the net earnings of November over July of over 13 per cent. (R. 22.)

The record shows that the increase in the sales of gas from 1913 to 1920 inclusive had been steady and rapid, increasing from 803,874,200 cubic feet in 1913 to 1,387,932,100 in 1920. (R. 174.)

May it not be safely assumed that the business will continue to increase under the reduced rates, and the income also continue to increase, until within a very short time a much larger per cent will be earned? Especially in view of the fact that the price of all commodities is falling, and the Company will be able to reduce its operating expenses.

It will not be presumed that a reduction of rates necessarily reduces income. On the contrary all experience shows that the reduction of rates will probably increase the amount of business and therefore increase the earnings.

Railroad Company vs. Wellman, 143 U. S., page 338.

Railroad Company vs. Gill, 156 U. S., page 649.

The record in the instant case shows that this is true.

BURDEN ON COMPANY TO SHOW RATES CONFISCATORY.

We insist that the Complainant has not made such a case as entitles it to an injunction restraining the Railroad Commission from putting into operation the gas rates prescribed by it on the 31st day of December, 1921. The burden is upon it to show that the rates are confiscatory. As we understand the rule the court will not enjoin the operation of the rates fixed by the Commission unless the Complainant shows clearly that the rates fixed are plainly confiscatory, and are so unreasonable and unjust as to amount to the confiscation of Complainant's property, and to the taking of the same without due process of law. In fact is there is doubt about it the court will refuse the injunction. Every presumption is in favor of the correctness of the decision of the Commission. The Commission is created for the express purpose of making rates, and to so regulate them as to do justice alike to the Company and its patrons. The Commission has a large discretion in these matters, and this discretion will not be controlled unless it is clearly abused. The Commission will be presumed to have acted and to have arrived at the proper conclusion, and the burden is on the Company to show to the contrary. This has been decided in a number of cases by the Supreme Court of the United States, as well as by other Federal courts.

Central of Georgia Railway Co. vs. McLendon et al., 155 Federal Reporter, page 974.

Minn. & St. Louis Railway Co. vs. Minnesota, 186 U. S., pages 257, 269.

Smythe vs. Ames, 169 U. S., page 466.

Sandiego Land & Tow[illegible]o. vs. Jasper, 189 U. S. 439.

Minnesota Rate Cases, 230 U. S. 355.

In the last case the court, in the opinion on page 355, said: "This court does not sit as a board of review to substitute its judgment for that of the Legislature, or Commission lawfully constituted by it, as to matter within the province of either. The question involved is whether the state has superseded the constitutional limit by making the rates confiscatory".

And in the case of Sandiego Land and Town Co. vs. Jasper (supra), the court, in the opinion on pages 441-442, said: "In a case like this we do not feel bound to examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we cannot say that it was impossible for a fair minded Board to come to the conclusion reached".

NO INJUNCTION WILL BE GRANTED IN ABSENCE TEST OF RATES.

The courts have uniformly declined to enjoin the operation of the rates where there has been no test, especially where the rates have been fixed after notice and hearing had, it being almost impossible to tell what would be a reasonable rate before the same have gone into operation. In the case of Lincoln Gas Light Co. vs. City of Lincoln, 250 U. S. 256, the court said, that, "They declined to hold that no rate that allowed six per cent was confiscatory, when it appeared that the lowest interest rate was eight per cent". But they declined to enjoin the rate, saying, "that there were too many doubtful items for them to declare the Ordinance void in the absence of an actual and timely test". In the case of Knoxville Water Co. vs. City of Knoxville, 112 U. S. 1, the court said, "It would not determine whether a rate of 4 per cent, after deducting 2 per cent for depreciation, was confiscatory, and amounts to taking of property without due process of law". In the same case on page 17

the court said, "We cannot know clearly that the revenue would much exceed that return. We do not feel called upon to determine whether a demonstrated reduction of income would or would not amount to confiscation. When the case rests, as it does here, not upon the observation of the actual operation under the ordinance, but speculation as to its effect based upon the operations of a prior fiscal year, we will not guess whether the substantial return certain to be earned, would lack something of the return, which would save the effects of the ordinance from confiscation."

In the instant case the rates were made after notice to the Company and a full and fair hearing had in which the Company appeared by its officers, agents and attorneys, and introduced evidence. There has been no test of the rates fixed, but the court is asked to arrest the operation of the order fixing the rates before there has been any opportunity to test their reasonableness by actual operation, and the court is asked to declare the rates confiscatory upon mere speculation as to the result of their operation. As decided in the case of Lincoln Gas Light Co. vs. City of Lincoln, and Knoxville Water Co. vs. City of Knoxville, cited above, this is not a sufficient test. Besides, the decrease in rates was small, only 10c per 1000 cubic feet, and ordered at a time when the business of the Company was increasing, and at a time when the prices of most commodities were declining, especially such articles as the Company needs most in the operation of its plant. Everything points to a rapid increase in the volume of its business, and a substantial decrease in the cost of operation. How can it be seriously injured by waiting long enough for an actual test of its rates to be made?

It does not matter by what method the Commission arrived at the value of the property, or whether it followed the proper method. No matter how erroneous the findings of the Commission may be on some of the contentions of

the parties, still if the result of the operation of the order as finally promulgated, has not been shown, by the Company, to be confiscatory, and amount to the taking of its property without due process of law, the injunction should not be granted. If the matter is in doubt the injunction should be denied for the wrong, if a wrong has been done, can be corrected by the Commission or to the courts, after the wrong has been made to appear by a practical test of the rates for a reasonable time.

The Railroad Commission has been exceedingly fair to this Gas Company as well as to the Power Company. There is nothing in its acts in dealing with them at any time that shows the slightest animosity, or the slightest evidence of any disposition to deal with them otherwise than in a fair and liberal manner. But on the other hand, everything done shows its good will towards them, and its desire to do them full justice. In November, 1918, when there was general demoralization in business and prices were soaring upwards, it allowed them to increase the gas rates from $1.00 to $1.25. Again, in October, 1920, it was given another substantial increase, raising the rates to 1.25, and again on the first day of March, 1921, the rates were boosted 25c and raised to 1.90. It was stated in these orders that they were emergency raises, and that they would be revised when conditions so authorized. The raises were asked by the Company on the ground that it was losing money on account of the abnormally high prices prevailing on account of the war. It was shown, for instance, that the price of coal had increased from $5.01 per ton in 1918 to $11.80 per ton in 1920, and the price of gas oil had increased in price from .091 in 1918 to .14 per gallon in 1920. (R. 86.) Acting on what it considered a change in conditions the Commission, on June 1st. 1921, ordered a reduction in the rates, bringing them down to 1.65, and on the 30th day of December, 1921, ordered another reduction of 10c, making the rate 1.55, which is now under review.

We desire to call the attention to some of the evidence introduced by the Company. The Company relied on the evidence of the experts alone to fix the value of the property. The principal witness being Mr. A. J. Luick, of Chicago. He is the only one, it seems, who made a complete inventory of the property, and he did not undertake to make any inventory and appraisement back of 1919, but took one that had been made by him as of that date. He also says that he did not do all the work himself, but much of it was done by others under his supervision. He said the work was done by his men from Chicago. (R. 261-263.) He also said that he relied on others as to the value of the real estate, that he knew nothing of the values of real estate. (R. 264.) He also said that in estimating what it would cost to replace the plant now that he based his calculations on information obtained from local contractors on building materials and building labor. (R. 264.) He also admitted that he arrived at the cost of reproduction, as of September 30, 1921, by using a per cent relation between the cost of buildings and miscellaneous structures as of January 1st, 1919, and as of September 30, 1921, and this per cent relation was applied to the values of January 1st, 1919, to arrive at an estimate of the cost of reproduction as of September 20th, 1921, and that his figures were not as accurate as they would be after a detailed appraisal. (R. 265-266.)

We desire to call the attention of the court to the evidence of this witness as appears (R. pages 262-275), as to the manner in which he arrived at the value of the property as a whole, and the manner in which he arrived at the amount to be allowed for working capital, and overhead charges. We insist that he includes in his allowance for overhead charges many items that should not be allowed, such as expense of legal organization, and cost of financing. It will be noted that this witness estimates the physical value of the property at $6,100,750. To this he adds for working capital, $425,000, $1,000,000 for going concern value, and

$567,457 for financing. In this way he manages to figure the whole value up to $8,093,207. We contend that this kind of evidence is insufficient to enable the court to find what is the real value of the property. Mr. Henry M. Brinckerhoff's evidence is of the same kind, merely estimates, and in many instances he adopts Mr. Luick's estimates. In the general result, however, he makes the value only $7,144,253. (R. 280-285). This witness also testified that he estimated that the output in gas in cubic feet would be 1,522,000,000 for the next nine months. This would be an increase of about 25 per cent over 1921, which would make a corresponding increase in the net earnings. (R. 316.)

It will be noted that although Mr. Luick said that he obtained the prices of the articles that would go into the cost of the reproduction from local contractors, the Company did not produce any of these local contractors as witnesses, to show what the real value was, nor did they produce any manufacturer to show these values, but relied on the weaker and inferior evidence of the information said to have been given these experts, which was mere hearsay evidence.

We call the attention of the court to the evidence of Mr. P. S. Arkwright, Vice-President of the Gas Light Company, on the subject of taxation of the Company's property. He testified that the property of the Atlanta Gas Light Co. includes elements which are not taxable. He said the working capital in here does not belong to the Atlanta Gas Light Co., but belongs to the Georgia Railway & Power Co., the going concern value is not yet taxable under the laws of Georgia, likewise the cost of financing is not yet made taxable. (R. 314.)

Now these three items alone, as claimed by him, amount to $1,992,457, nearly two million dollars, or nearly one-fourth of the entire value of the property, as claimed by the Company. Yet the Gas Light Company, without paying one

cent of taxes on this immense sum, asks the courts to allow them to earn eight per cent annually upon every cent of it. We also desire to call the attention of the court to an affidavit of C. M. Candler, Chairman of the Railroad Commission, and used as evidence in the case. The affidavit is as follows. I attach hereto a page of the Atlanta Constitution, a daily newspaper published in Atlanta, with an extensive circulation in said city, dated September 20th, 1921, containing a full page advertisement, by the Georgia Railway & Power Company, P. S. Arkright, President, in which occurs the following paragraph, to-wit:

"This Company has for the past few months earned a fair return upon its gas properties, if the earnings of those months were to be regarded alone. But for the four years, 1917 to 1920, we sustained a loss of $972,804 from what, under the formula and valuation established by the Railroad Commission, we were entitled to earn".

At the time said advertisement appeared, and for several months prior thereto, to-wit, since June 1st, 1921, the maximum net base rate allowed to be charged for gas by said Company was $1.65 per 1000 cubic feet, and that said Railroad Commission's order of December 30, 1921, of which the Complainant still complains, was based upon a study of Complainant's earnings for five months, to-wit, July to November, 1921, inclusive. Since the months of June, July, August and September of each year, being warm weather months, during which there is small use of gas for heating purposes, show uniformly smaller consumption of gas than the winter months, and that a study of the operating expenses of these summer months, because of such lessened consumption, overhead expenses continuing practically constant, shows results less favorable to Complainants than if a like number of winter months were included in a study thereof. (R. 386-387.)

It will be seen from this evidence, according to the admission, in writing, of the President of the Power Company, and Vice-President of the Gas Company, that under the 1.65 rate the Gas Company was receiving a fair return on its gas properties for the several lean summer months of 1921.

Under the undisputed evidence in the case the earnings for the other months were considerably larger than for the summer months, then how can the Company now say that the 1.55 rate, when applied to the earnings for the whole year, is confiscatory?

There is no sort of doubt but, that if the rates now prescribed should prove to be too low to allow the Company a fair return upon its property, after giving them a full and fair test, under actual operation for a reasonable time, the Commission will revise the rates so as to insure it a fair return. We insist that they should be required to make some kind of a practical test of the rates so as to be able to show to the court that they really are confiscatory before asking the court to annul them.

Submitting that the Complainant has failed to make such a case under the law and the evidence, as will entitle it to the relief sought, we ask that the judgment of the District Court denying the injunction be affirmed.

Respectfully submitted,

E. J. REAGAN,

Defendants' Attorney.

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Supreme Court of the United States

October Term, 1921.

No. 801.

GEORGIA RAILWAY AND POWER COMPANY AND ATLANTA GAS LIGHT COMPANY,
Appellants,
vs.
RAILROAD COMMISSION OF THE STATE OF GEORGIA,
C. M. CANDLER, Chairman, et al.

BRIEF AND ARGUMENT OF WM. CHAMBERLAIN, AMICUS CURIAE.

Upon the 31st day of December, 1921, the Appellee Railroad Commission made an order reducing Appellant's Net Gas rates from $1.65 per thousand cubic feet to $1.55 per thousand cubic. This action was brought to test the constitutionality of the new rate. The Bill contained allegations that the new rate would result in a reduction of Appellant's revenues in the sum of $140,000.00 per year and a denial of just compensation for the service rendered. A temporary restraining order was issued pending the convening of the Statutory Court. That Court took evidence and upon the 26th day of January, 1922, entered its order denying a preliminary injunction. A written opinion was filed. From this order this appeal was taken.

BRIEF AND ARGUMENT.

The preparation of this brief has been prompted by the fact that a number of the assignments of error submitted present questions involved in pending actions in which the writer is counsel. The grave importance of these questions to all public utilities and all investments, the return upon which is subject to public regulation, will, I trust, be considered sufficient justification for its submission. But three general propositions are discussed and it has been the purpose of the writer to treat them in their broader aspects only. These three propositions, each covered by a specification of error, may be stated as follows:

(Assignment of Error No. 5.)

First—The undisputed evidence shows that during the year 1917-1920 inclusive, appellant made repeated requests of the Commission for increased rates. That each of these requests was rejected and a lesser rate establishd by the Commission which appellant was directed to try. That during the bona-fide trial of these several rates, appellant was denied just compensation, readily available and due it under its constitutional guarantees, of approximately one million dollars and in one year (1920) in addition to its denial of any return suffered an out of pocket loss from operations of $57,500.

We submit that the trial court erred in holding that no right existed upon the part of appellant to

have these insufficient earnings and out of pocket losses given just consideration in the making of future rates—**the Commission having provided no reserves from past rates to meet such situations.**

(Assignments of Error Nos. 1, 2, 15)

Second—The Bill of Complaint filed and the evidence offered herein showed **without dispute** that the rate complained of reduced appellant's revenues by the sum of $124,000 per annum. The **undisputed evidence** also showed that the Commission had declined to give any consideration whatever to the present value of appellant's property acquired prior to 1914 or of its stores and working capital in fixing its rate making base. Notwithstanding this the trial court held that an interlocutory injunction should not issue until a trial of the new rate.

We submit that under these circumstances the trial court erred in denying the interlocutory injunction for the reason that when the court denied plaintiff's right to have losses suffered by it during the trial periods considered in rate making, it became its plain duty to protect plaintiff from the possibility of **such irreparable losses** where this might be done by the simple expedient of requiring a bond or the impounding of the revenue during such period.

(Assignments of Error Nos. 1, 2, 15)

Third—The undisputed evidence showed that the Commission, though possessing full knowledge of the method of valuation required under the constitutional limitations upon rate making, declined to apply such method or give any consideration what-

ever to the present value of the greater portion of plaintiff's property. Nevertheless the trial court declined to issue a temporary injunction without a trial of the rates **established by the commission to yield a fair return upon this rate base.** We submit that where plain and prejudicial error appears in the calculations of a commission or in its method of procedure the so-called presumption of legality no longer inheres in such order and an injunction with proper bond should issue to maintain the status until the court can fully hear the case and reach an independent judgment upon the matters at issue.

STATEMENT OF THE CASE.

In this statement of the case no reference has been made to testimony save such as bears upon the assignments of error discussed. The testimony was practically undisputed and the various facts deemed pertinent are concisely set forth in the following numbered paragraphs:

First—The state, since the 23rd day of December, 1909, has assumed the power to and actually fixed all charges for defendants' service. (Record 343.)

Second—This function the state has performed through its Railroad Commission, **and from the acts of this Commission no appeal is provided or available.**

Third—Complainant, therefore, has been and is without remedy against the rates so established, save

such remedy as the courts afford for violation by a state of the constitutional inhibitions against the taking of private property without due process of law or just compensation therefor.

Fourth—The rate established in 1909 gave no cause for complaint until the greatly changed conditions of the year 1917 came upon the country. The true character or degree of permanency of these conditions were not immediately discernible and no remedy either before the commission or in equity was deemed available to appellant until conditions had somewhat stabilized. Accordingly appellant accumulated the experience and data of the year 1917 and on April 6th, 1918, made correct representations and proofs to the commission as to the inadequacy of the rates then in force. These complaints were repeated from time to time during the following four years.

Fifth—Adhering to its previous policy of **itself fixing the rates** the commission continued throughout the succeeding four years to reject appellant's petitions and to itself fix lower rates of charge which appellant was directed to try. The increase being substantial each time and conditions being unsettled appellant deemed itself under the necessity of giving each new rate a fair trial as directed. (Record 336-7.)

Sixth—The result to the company of this policy and of these rates is disclosed (Record page 233) in the report to the commission of Professor H. E. Riggs of the University of Michigan, dated April 27th, 1921. Professor Riggs was especially employed

by the Commission, to make the report, and his figures are uncontradicted. They are somewhat less than similar calculations by appellant. The calculations as to **deficits in return** are based upon the actual findings of the commission as to the fair value of appellant's property. The results were as follows: (Professor Riggs assumed that the appellant should have the return **during those years** found by the commission to be fair, 7½% in 1917—8% in the remaining years).

1917—(Rate $1.00)	
Value of property during this year...	$3,963,117
Amount required to yield fair return (7½%)	297,234
Company actually permitted to earn..	123,907
Deficit in fair return	173,327
Rate of return	3.1%
1918—(Rate $1.00 to Oct. 1st, then $1.15)	
Value of property during this year...	$4,058,350
Amount required to yield fair return..	324,668
Company actually permitted to earn..	58,900
Deficit in fair return	265,768
Rate of return	1.4%
1919—(Rate $1.15 throughout year)	
Value of property during this year...	$4,133,362
Amount required to yield fair return..	330,669
Company actually permitted to earn..	195,854
Deficit in fair return	134,815
Rate of return	4.7%

1920—(Rate $1.15 to Oct. 1st—then $1.45)

Value of property during this year...	$4,267,500
Amount required to yield fair return..	341,400
Company had actual operating deficit of	57,494
	398,894

The deficit in fair return therefore was $341,400, to which must be added an out of pocket loss on operation of $57,494, making a total of $398,894. The appellant was thus deprived for the year of any earning whatever upon $4,267,500 worth of property devoted to the public service and forced to contribute $57,494 in addition thereto.

Seventh—Predicating the statement upon the premise that appellant is guaranteed by the constitution against the taking of its property without due process of law and without just compensation and that rates which fail to yield a just rate of return otherwise available offend against this constitutional guarantee it is fair to say:

a. That upon appellees' own findings of the value of appellant's property and of the rate of return to which it was entitled (7½% 1917, 8% thereafter), appellant's constitutional safeguards have thus far proven ineffectual to prevent its property from being taken in the following sums:

1917	$173,327
1918	265,768
1919	134,815
1920	398,894
	$972,804

(Note: Upon the basis of a fair return of 6%, the lowest rate of return ever sustained by this court under the most favorable circumstances, this sum would be diminished one-fourth, still leaving a total of $729,603.)

b. Placing the calculation upon a different basis (of applying the full return to the appellant's property as far as it will go) it is equally true to say that appellant has been denied **any earning whatsoever**, during the years indicated, upon property devoted to the public service of the values shown in the following table:

8% basis

1917	$2,166,587
1918	3,322,100
1919	1,685,187
1920	4,267,500

6% basis

1917	$1,650,309
1918	3,076,784
1919	869,129
1920	4,267,500

An averaging of the totals of the first table discloses the fact (which must give concern to every person holding investments in the securities of public utility companies) that **during a period of four years of unparalleled prosperity** in the city served, this company was by act of the state denied any earning whatsoever upon property devoted to the public service, of the average value per year of $3,603,435.

Eighth—The year 1921 thus came in with the company barely emerging from the period of actual out of pocket **losses from operations.** The **actual rates and earnings** by months for the year were as follows: (From commission's testimony.)

1921

Months	Rates	Earnings	Record
January, February	1.45	$ 1,620.00	120
March, April	1.90	115,423.00	120
May	1.90	73,581.00*	378
June	1.65	49,567.00*	378
July	1.65	34,283.56	132
August	1.65	36,833.36	132
September	1.65	45,254.20	132
October	1.65	39,743.20	132
November	1.65	57,697.67	132
December	1.65	57,697.67	132
		$511,700.66	

*Note: From the total $82,968.00 shown on the statement must be deducted the depreciation of $9,387.00, leaving $73,581.00; the same must be done

on the June statement, leaving the sum of $49,567.00. December earnings not shown in Record so assumed to be the same as November's.

The valuation fixed by the Commission as of December 31, 1921, is $5,250,000. Therefore upon the Commission basis of valuation the return for the year was 9.7%.

Ninth—On December 31, 1921, the Commission definitely announced its intention of giving no consideration whatever to the losses of appellant during the period 1917-1920 inclusive and promulgated a new rate order establishing reduced rates designed to yield appellant a fair return upon the valuation it then fixed upon appellant's property.

Tenth—Alleging the pending confiscation of its property if this order became effective appellant filed its Bill and supported it upon hearing by the testimony of numerous witnesses. Among other facts it appeared without dispute that the reduction of 10 cents per thousand reduced appellant's revenues at the rate of $124,000 per annum. (See trial court's opinion, Record 396.)

Eleventh—The Commission answered the Bill and in its Answer set forth in detail the method adopted by it in establishing the rate base upon which the reduced rate of $1.55 per thousand was designed to yield a fair return and admitted that it neither had nor intended to give consideration to the results of the years 1917-1920 in its present or future fixing of appellant's rates.

Twelfth—In its answer the Commission set forth the exact method followed by it in making up its valuation. (See Record 30.) From this statement it appears that the Commission first **assumed to find** the value of the plant as though it were new and then deducted from this amount 11.4% as representing accrued depreciation. In fact, **as shown**, the Commission made no attempt to ascertain the **present** value of the property purchased prior to 1914, but merely took as the **present** value (Dec., 1921) the value of 1914 as found by an engineer in 1914. **From this sum it deducted depreciation.** In short, although the finding was made in 1921 and the property, **measured in dollars**, as all property must be measured in legal proceedings, was worth 70% more than in 1914, the Commission declined to recognize that fact—**but deducted accrued depreciation from the 1914 value.** The maxim that it is a poor rule that will not work both ways was not considered in this matter.

Thirteenth—The testimony in the case bearing upon the inventories, valuation and rate of return was practically undisputed. We shall summarize it under appropriate heads.

Valuation.

The witnesses upon this point were engineers Luick and Cavanaugh of the firm of Wm. A. Baehr & Co. of Chicago and Brinckerhoff and Fitting of the firm of Parsons, Klapp, Brinckerhoff & Douglas of Philadelphia, each of whom made inventories and appraisals for the company, and Prof. H. E. Riggs

of the University of Michigan who made an inventory and appraisal for the Commission. These inventories and appraisals constituted **the entire evidence** before the court upon the question of valuation and summarized were as follows:

Value of physical properties and working capital—

new.

	Engineers Luick and Cavanaugh, value Sept. 30, 1921	Engineers Brinckerhoff and Fitting, value Sept. 30, 1921	Engineer Professor H. E. Riggs, value Jan. 1, 1921	Average for all five (5) Engineers
Physical properties	$6,926,307	$6,938,858	$7,370,700	$7,078,622
Working capital	425,000	418,443	414,000	419,147
	$7,351,307	$7,357,301 (p. 221)	$7,784,700 (p. 244)	$7,497,769

Value of properties deducting accrued depreciation.

Physical properties	$6,100,750	$6,025,810	$6,452,994	$6,193,185
Working capital	425,000	418,443	414,000	419,147
	$6,525,750	$6,444,253 (p. 221)	$6,866,994 (p. 244)	$6,612,332

Thus the lowest point reached in the testimony as to the value of the **physical property and working capital** was $6,444,253. To this should be added going value and estimating this at the rate of 10% as found by the Commission gives a total of $7,088,678 which represents the low point in the evidence before the court.

Working Capital

Working capital, which is the amount of cash, materials, and labor on hand and represented in gas sold to customers and yet uncollected for (customers' accounts), was fixed at the **same amount per customer** as in 1914. This finding wholly ignored the readily apparent fact that if $8.23 per customer in supplies and materials were required in 1914 nearly twice that much would be required in 1921. Every housewife and head of a family in Atlanta knew this. As a matter of fact the Record shows that the company was actually using almost twice the amount of working capital allowed (Luick, Record 268-270). It seems not unjust to characterize these findings as wholly lacking in candor and fairness.

Rate of Return.

The testimony showing the **lowest rate** of return demanded and ordinarily received in similar businesses in Atlanta was as follows:

H. M. Atkinson, Chairman of Board of Appellant 8%
Robt. F. Maddox, Banker 8%
Henry W. Davis, Banker 8%
T. C. Erwin, Banker 8%
H. L. Morris, Banker 8%
Jno. B. Wheatley, Banker 8%

There was no dispute upon this point though the discount rates of the Federal Reserve Bank for prime short time negotiable paper were shown. It was admitted however **that even the secured obligations of appellant company would not be accepted by this bank.**

DIVISION ONE.

Assignment of Error No. 5.

Because said special tribunal held (sustaining the opinion of the Railroad Commission of Georgia) that said Commission had no power to consider, amortize or capitalize losses amounting to $1,025,514.38, which, under the undisputed evidence, complainants were forced to sustain during the years 1917 and 1920, inclusive, because of grossly inadequate rates fixed and enforced by the commission for said years. The elimination of these losses by the special tribunal, and its holding that said losses could not be considered, amortized or capitalized by the Commission, resulted in the confiscation of said sum so lost, in contravention of the Fourteenth

Amendment to the Constitution of the United States, and the taking of said sum for public use without compensation.

Summary of Particular Facts Pertinent to This Division.

The serious nature of the error specified in the 5th assignment from the viewpoint of the owner of property devoted to public service will be readily apparent to one who considers the following brief summary of the following undisputed facts shown in this record.

First—Since the 23rd day of December, 1909, all the rates of appellant have been fixed by the state acting through its Board of Railroad Commissioners.

Second—No appeal has been or is now provided by the statutes of Georgia from rate making orders of this commission.

Third—Throughout the four years from 1917 to 1920, inclusive, and for the first two months of the year 1921 the rates so fixed were undisputedly confiscatory. In the year 1920 they did not yield even actual operating expenses.

According to the Commission's expert, Professor H. E. Riggs of the University of Michigan, who based his calculation solely upon the Commission's own finding as to the valuation and rate of return (see Record 171-205-251), the company fell short of earning a reasonable rate of return during these four years by a total sum of $972,804 while in the year

1920 it actually failed to earn its operating expenses by the sum of $57,494. The per cent of yield by years was as follows:

1917	
Valuation	$3,963,117
Earning	123,907
Per Cent Return	3.1%
1918	
Valuation	$4,058,350
Earning	58,900
Per Cent Return	1.4%
1919	
Valuation	$4,133,362
Earning	195,854
Per Cent Return	4.7%
1920	
Valuation	$4,267,500
Earning	00,000
(Operating deficit of $57,494)	
Per Cent Return	0
1921	
Valuation	$5,250,000
Earning ($511,700 less $57,494 deficit of previous year)	454,206
Per Cent Return	8.6%
Average Per Cent Return for five years	3.5%

The company's calculations based upon the Commission's valuation and rate of return show the total loss of return to be something more than a million dollars.

Fourth—Appellant throughout this period repeatedly applied for increased rates and repeatedly called the attention of the Board of Railroad Commissioners to its needs. Each time relief was granted only in a small part and the Company was directed to try out the new rate. Thus under the generally recognized rule of this court, the circumstances were such as to require a reasonable trial of each new rate as a pre-requisite to injunctive relief based upon the charge of confiscation.

Fifth—It is a matter of common knowledge that the years named were years of unparalleled business activity and prosperity. That reasonable earnings were readily available to plaintiff except for the orders of the commission limiting its rates of charge is not to be denied.

Summing up these facts, the record discloses without contradiction:

First—That during the years 1917 to 1920 inclusive the appellant was compelled by force of the law of Georgia to render a public service at less than just compensation therefor (indeed during one year with no compensation and at an actual loss) and that the state has declared its purpose to segregate these years as a period by themselves, and give them no consideration in the fixing of appellant's future rates.

Second—That acting pursuant to its expressed purpose of ignoring the losses inflicted upon appellant by its repeated orders extending over a period of four years the unconstitutionality of which was demonstrated by fair trials, the appellee Board has

begun a systematic reduction of appellant's rates. **That the new rates are avowedly designed to meet appellant's future operating costs and return only,** with no provision for carrying forward and disposing of the four years' losses **suffered while trying out the insufficient rates** ordered by the Commission.

Third—That the trial court has announced its approval of this doctrine of the Commission; has confined its investigation of the rates to their sufficiency for the immediate future only and has in its turn refused appellant relief until it has tried the rates fixed in the last order.

Brief of Argument.

Point One.

The rule making a fair trial of a rate a prerequisite of injunctive relief under the circumstances disclosed by this record, **supplemented** as in this case by the doctrine that all losses experienced during the trial must fall upon the utility is capable (as herein demonstrated) of becoming an instrument of injustice and oppression so potent as to excite the apprehension of every person who has property devoted to a public service. It appearing without dispute in the evidence that just compensation for the use of its property to the extent of approximately one million dollars has been denied appellant, these two doctrines supplementing each other are confidently

asserted as conclusively supporting the claim that its constitutional guarantees have been fully respected. We respectfully submit:

First—That it is contrary alike to a sound interpretation of the constitution and to natural justice to hold that the state may subject private property (even though devoted to a public use) to a system of regulation under which the company is defenseless as against a gradual but nevertheless steady taking of its property without just compensation.

Second—That doctrines either of procedure or of substantive law which afford a logical premise for such a deduction must therefore in themselves be faulty. (These faults we shall endeavor to develop.)

Point Two.

The fixing of rates of charge for a service to be rendered in the future can never be an exact process. At the best the rate must be based upon an estimate of future costs and, therefore, it is obvious that if a fair return is to be provided one of two general methods must be followed by the rate making body:

1. There must be established a rate sufficiently high to yield the estimated cost of rendering the service plus a fair return and leave a surplus over with which to establish and build up a contingent reserve which may be drawn upon in times of un-

usual cost and thus permit of maintaining a uniform rate of charge through good times and bad. Or

2. There must be established a rate which barely meets the cost of rendering the service plus a reasonable return but leaves no surplus for the building up of a contingent reserve. This policy once adopted will require immediate and more or less frequent readjustment of the rates to meet increasing costs of production. In as much as the readjusted rate must always operate in the future lapses below a reasonable return or actual out of pocket losses in operation pending the readjustment, must, of course, be carried into the future rate.

Point Three.

It is an erroneous conception to assume that a consumer of a public service is entitled, as of right, to receive his service at the exact cost thereof plus the return for the **particular calendar period, month or year when rendered.** Such a conception ignores basic economic laws which operate upon all business public or private and require the averaging of certain elements of costs over reasonable periods of time. The cost of a considerable explosion in a works is a legitimate cost of operation yet no sound commission would require or even permit the rates of one year to carry the entire burden of such an item of operating costs. On the contrary if no accrued reserves had been accumulated, this item would be

spread forward and charged, a reasonable portion each year, into operating cost. Will it be contended that this action results in the perpetration of a wrong upon the consumer of the future years, though he was not a consumer when the explosion took place? Or if sound contingent reserves are built up is it to be said that a wrong is inflicted upon the consumer who leaves the city before these reserves are drawn upon? If this practice is to be condemned the financial policies of both private industry and of governments come under condemnation. Do not the tax payers of today erect great permanent works and buildings which accrue to the benefit of those to follow and will not the tax payers of the future help pay some of the essential costs of perpetuating the government of today? It is a superficial fallacy, unsupportable as against any attentive consideration, to assume that public or private business may be conducted on such a basis that a rate or charge may be fixed according to the exact cost of the hour, the day, the week, month or year of the service. The actual cost of one hour will differ from that of another. The small items will be spread over the days costs; larger items will require a larger spread; and still larger items will require a number of years in the averaging. In the great affairs of governments some costs, as those of wars may be spread over generations, some of them yet to be born.

The Supreme Court of Virginia has passed squarely upon this point. Considering the identical

question in Petersburg Gas Co. vs. Petersburg, Va., 110 S. E. 533; P. U. R. 1922 C. 172:190 it says:

> "For reasons stated by the Commission we do not think that the losses sustained by the gas company prior to its application for an increase of rates should be amortized but if, upon further investigation, it is ascertained that a loss has been sustained since that date in consequence of the rate fixed by the Commission, such loss should be amortized and spread over such a term of years as will be fair to the gas company and not too burdensome to the consumers."

The Public Service Commission of Indiana has also taken the same position, saying:

> "Under any equitable system of regulation an obligation would rest upon a Commission to provide return for a utility for deficits suffered by reason of the failure of the Commission to authorize adequate rates."

Re: Indiana Fuel & Light Co., P. U. R. 1920 A. 414; 418.

Re: Michigan State Telephone Co., P. U. R. 1921 C. 545; 564-5.

See also on averaging of operating costs over the future:

Kansas City So. Ry. Co. vs. U. S. 231 U. S. 423; 446.

Point Four.

It does not follow as suggested by the distinguished trial court that to require rate making bodies to adopt and adhere to one or the other of two methods described in Point One is **to guarantee** income to a utility. It is, of course, quite true that a privately owned gas company is a business enterprise and from the standpoint of its owners nothing more. If the venture is economically sound it will prosper; if economically unsound the loss falls wholly upon the owners. **The state guarantees it nothing.** The risk and hazard from any economic cause such, for instance, as the supplanting of gas service by electricity or any other method of heating or from failure of demand for the service must be borne by the investor. But where the demand is great, times are prosperous and the opportunity for earning a fair return is available it is and must be an unconstitutional exercise of the police power to fix the rate so low that a fair return cannot be earned. **The requirement that a rate fixing Board adopt reasonably prudent and just methods of regulation is not a guarantee of return to the utility. On the contrary it is no more than a reasonable recognition of the utility's constitutional guarantee against confiscation of its property.**

Point Five.

Due regard for the constitutional guarantees of the citizen requires that rate making be practiced in such a manner as to safeguard so far as reasonably possible the rights of both investors and consumers. Where both may be reasonably protected by the adoption of a method readily apparent in the exercise of sound business judgment, a method which results in the denial to a company of a fair return for a period of four years and in an actual operating loss in one, with no possibility of recoupment, demonstrates its own unreasonableness. The adoption of such a method is, therefore, in itself an arbitrary and unlawful exercise of the police power.

Point Six.

The rule followed by the Federal Courts requiring a fair trial of new rates established under such circumstances as surrounded the fixing of those throughout the period from 1917 to 1920, inclusive, is entirely inconsistent with the theory that the losses suffered during the trial are not to be considered as natural burdens of the business, but solely as burdens of the owner. If under this theory one may lawfully be deprived of just compensation for the use of his property for a period of four years why not for eight years or twelve years or indefinitely?

Point Seven.

All legitimate operating expenses must be taken into consideration in the fixing of rates by public rate making bodies. Contingencies naturally incident to the business must be taken into consideration and provision made therefor. If, as suggested by the learned trial court, erroneous opinions of public rate making bodies are among the natural risks to which this business is subject, then the losses or failures in earnings incidental thereto are properly chargeable operating costs. And as losses, the extent or certainty of which cannot be ascertained until the happening of the event, they must be provided for either by the accrual from year to year of contingent reserves or surpluses or by being spread over future operations.

Point Eight.

If it be true that as a natural risk a utility may suffer protracted periods of low earnings or even out of pocket losses due to erroneous estimates of rate making bodies it follows as a natural correlate that this risk must be substantially reflected in the rate of return. **This is axiomatic as no business can even survive let alone receive just compensation the earnings of which are not on the whole compensatory.** To restate the proposition it is mathematically certain that a company which receives at

intervals only a just return and during intervening intervals less than a just return or suffers actual out of pocket losses, will not receive just compensation for its continuous service. Therefore, the rate of return to meet this situation must be substantially higher than would be the case were the return to be fairly relied upon.

Willcox vs. Consolidated Gas Co., 212 U. S. 19;
Lincoln Gas Co. vs. Lincoln, 250 U. S. 256;

Point Nine.

The record discloses that from the outset of its rate making activities the commission followed the policy of limiting the rates to a point where the bare reasonable return required by law and good conscience was accorded the company. (See Professor Riggs tables—Record 250-251.) The annual rate per cent of the return realized during the years prior to 1917 under the rates fixed **using the Commission's valuation as the basis** were as follows:

1913 ..... 7.4%
1914 ..... 7.9%
1915 ..... 8.1%
1916 ..... 7.3%

The rate now complained of is a substantial reduction of the rates in effect during the greater portion of 1921 and was designed by the Commission to yield a return of approximately seven per cent on the Commission's valuation.

Point Ten.

Methods of rate making, under the practice of which the constitutional rights of private property may be denied, can never be approved by courts of equity where other methods are open, under the practice of which the rights of both the company and the consumer may be fully protected. Adopting the language of this court in the Minnesota rate cases, 230 U. S. at 343, "private property embarked in it (public service) is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title but to the right to receive just compensation for the service given to the public." The lowest rate of return which this court has ever held to be just was 6% in the case of the Consolidated Gas Company of New York which was described as the most favorably situated Gas Company in America. That case was tried in an era of low interest rates. Upon the facts of this entire record, therefore, including if desired the earnings of the company from the year 1913 down to date, it is not to be denied that the rates fixed by the Railroad Commission of the State of Georgia during the years 1917 to 1920, inclusive, were a denial to the Appellant of its right to receive just compensation for its service given to the public. Nor does justice to the Commission require that we refrain from suggesting that the policy of the Commission was ill calculated to do justice to the company. Upon this point we have the Commission's

own statement contained in its 48th report which appears upon page 340, 341, 342, of the record. From this statement we quote:

> "Since 1917 nearly every local utility in the State has made one or more applications for increased rates. With the first of these applications, the Commission adopted the policy, possibly a mistaken one in view of subsequent events, of holding any increase granted down **to the most meager return which is believed could be sustained in the Court,** should any such be carried there by the utilities. This policy was based upon the thought that conditions were abnormal of uncertain duration and liable to change at any time and quickly.
>
> "The Commission was of the opinion that from the public's standpoint the rate situation should remain in the Commission's control and this control such, that if costs of service were merely transitory and should be for any reason suddenly lowered, the public would not bear an excessive burden during the period of inquiry, always requiring some time.
>
> **"The applicants therefore were in effect told to go ahead with the minimum increases, granted, try out the prescribed rates and report results to the Commission, monthly, when if in actual use they were found to be low, the Commission would examine into the situation again.**
>
> * * *

"We have, in every instance, held their values to the lowest possible figures consistent with well defined principles as to valuation. **We have held their returns on these minimum values to figures only short of a denial of what is reasonable.**

"We have done this in spite of the certain knowledge that during the recent years of plenty, even of abundance, these utilities had to content themselves with increases of ten, fifteen, twenty, twenty-five, or in a few instances, higher percentages, when every product sold had been increased from fifty to three and four hundred per cent.

"The Commission was more intent on keeping these utilities going and able to adequately serve the public with rates that would meet operating expenses, taxes and depreciation, than it was for providing the reasonable returns which, under the law, they had the right to demand, even in times of universal depression."

Point Eleven.

It is readily apparent from a most casual reading of the 48th report of the Railroad Commission that the Commission became so impressed with the bad business conditions and unjust criticism of the year 1921 that it failed to courageously meet a situation which its own policy had brought about. The Commission says,

"Business forgot the years of plenty and high tide, of unrestrained profit and liberal expenditures for every gratified want and criticism of every increase in the cost of living, however small, naturally became rife. It was a psychological resultant. Patrons of the utility at once said we are making nothing; many of us are actually losing money and only carrying on our business or running our factories to keep our organizations together. Why should the utilities be allowed to earn six, or seven, or eight per cent; why should they not share losses with the general public?"

But the Commission and the Public both very readily forgot that during the years of plenty and high tide and of unrestrained profit this company was experiencing the most disastrous years of its history and that simple justice required that the erroneous policy of the Commission in respect to it be righted.

Point Twelve.

The suggestion of the learned Commission that if it is to consider the four years losses it should also consider the past to ascertain if larger profits than reasonable were made is shown by the record to be without merit in point of fact. The record discloses that no unreasonable earnings had been made. Moreover the rates are constantly under the control

of the Commission and compensation received by a company under rates fixed as reasonable could not, years later be taken from the company, upon the theory that they were in fact too high. No business could live under such an intolerable and unjust system of regulation. From the standpoint of the state, the Commission, to which this legislative authority has been delegated, must always be assumed by the Courts to have done its duty. Having fixed a rate as a lawful one, to permit it years later to assert its right to revise its opinion and declare the rate to have been unlawful and the earnings derived therefrom unlawfully excessive would be in violation of the plainest principles of justice.

Point Thirteen.

The principle here contended for is readily distinguishable from the theory of capitalizing past deficits disapproved by this court in the Galveston case. The unusual doctrine was there urged that in the appraisal of a plant for rate making purposes, the amounts by which it had in the past failed to earn a fair return should be added into the appraisal as so much additional property value. As pointed out by this court this theory, in actual application, brought one face to face with the extraordinary conclusion that the greater a company's losses the greater became its value. It must also be borne in mind that the so called past deficits there complained

of were almost all, if not quite all, occasioned by economic forces such as the great tidal wave—lack of patronage and misfortunes of a similar character. The Principle here contended for is purely one of rate making and may be fairly summarized as follows:

A rate making body must function with a due regard to the constitutional protection which "extends not merely to the title but to the right to receive just compensation for the service given to the public." Its rate making powers are legislative and so long as constitutional rights are observed it stands free from judicial restraint, whatever general method it may adopt. But when the method of rate making it has adopted, fairly considered, is neither consistent with a just regard for the rights of the owners of the property concerned, nor with sound business practices, or, as in this case, is in its very nature **bound from time to time to result in a denial of those rights**, it is inevitable that it be subject to judicial condemnation.

DIVISION TWO.

(Assignments of Error Nos. 1, 2, 15.)

1. Because the said special tribunal, in sustaining the order and opinion of the Railroad Commission of Georgia, fixed, for the purpose of rate making, the value of complainant's fixed and physical properties as of the year 1914, plus

the cost of improvements added since said date, less depreciation; the effect of which was to eliminate, in determining the value of complainants' fixed and physical properties for rate-making purposes, the enhancement thereof since the year 1914, which, according to the undisputed evidence, amounted to $2,500,000.00; and under this plan of valuation adopted by the said special tribunal, the property of complainants is taken from complainants for public use without permitting them to earn any return thereon, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to them the equal protection of the laws.

2. Because said special tribunal erred in adopting the Railroad Commission's erroneous and illegal formula of valuation, and in not determining for itself the fair present value of complainants' physical property as shown by the undisputed evidence in the case.

15. Because, for each and all of the reasons herein set forth, the special tribunal should have granted the interlocutory injunction as prayed in said original bill.

Brief of Argument.

Point One.

There is no theory of valuation or fair rate of return under which the rate order complained of

can be sustained if it be held that due consideration should have been given to the years 1917-1920. If, however, the court should accept the theory of the trial court upon the proposition it will remain to be determined whether or not the temporary injunction should have issued upon the remaining charges of confiscation.

Point Two.

Predicating the assertion **upon the assumed premise that it is the true rule that losses during trial periods need be given no consideration in rate making,** we submit:

a. That where a bill charging a rate to be confiscatory properly supported by evidence is filed and a proper bond tendered an injunction should issue as a matter of course, and the case directed to a speedy trial.

b. That (if the first rule is considered too broad) upon showing of error in the methods used by the Commission in arriving at the rate fixed in its order an interlocutory injunction should issue as a matter of course. This because error once shown, the order can no longer be said to possess that sanctity which the legal fiction ordinarily recognizes as surrounding orders of this character.

c. That the two rules—(one requiring the trial of a rate except in the clearest cases; the other casting the full burden of losses during the trial upon

the utility) working together may operate and as applied in the case at bar have operated to make possible repeated acts of confiscation against which the utility is without remedy.

d. That however the order of the Commission may be characterized, whether it be Administrative, Legislative or Quasi-Judicial, if erroneous, it will permanently dispossess appellant of its property as effectually as the judgment of a court. Yet what enlightened system of Jurisprudence has failed to make full provision for appeals and for supersedeas of judgments and decrees pending appeals?

e. Assuming a reasonable trial period to be six months—and that an injunction issue at the end of the period—it is undeniable that appellant will have taken from it **$62,000 of compensation justly due it** and that from the order thus taking its property it had neither the right of appeal nor supersedeas.

Point Three.

Due respect for the acts of a co-ordinate branch of the government does not require that courts accord to the orders of a Commission which **may in effect deprive persons permanently of property,** a higher regard than is accorded judgments of courts. Therefore if it be the rule that losses of compensation justly due or losses out of pocket, suffered during trial periods of erroneous orders of rate fixing

Commissions fall wholly upon the owner, it must also be the rule of equity that supersedeas by way of interlocutory injunction and bond will be granted covering the trial period when formal showing charging confiscation is made.

Point Four.

The theory of the interlocutory injunction and its useful purpose has been thus stated by the distinguished Senior Justice of the 8th Circuit:

> "The controlling reason for the existence of the judicial power to issue a temporary injunction is that the court may thereby prevent such a change in the relations and conditions of persons and property, as may result in irremediable injury to some of the parties before their claims can be investigated and adjudicated. It is a familiar rule of equity jurisprudence that if the questions presented in a suit for an injunction are grave and difficult, and the injury to the moving party will be certain, great, and irreparable if the motion for the interlocutory injunction is denied and the final decision is in his favor, while if the decision is otherwise, and the injunction is granted the inconvenience and loss to the opposing party will be inconsiderable or probably may be indemnified by a bond, the injunction usually should be granted. Allison v.

Corson, 88 Fed. 581, 584, 32 C. C. A. 12; City of Newton v. Levis, 79 Fed. 715, 718, 25 C. C. A., 161, 163; Great Western Ry. Co. v. Birmingham & O. J. R. Co., 2 Phil. Ch. 597, 602; Glascott v. Lang, 3 Myline & C. 451, 455; Shrewsbury & C. R. v. Shrewsbury & B. R. Co., 1 Sim. (N. S.) 410, 426; State v. Brailsford, 2 Dall, 402, 1. I. Ed. 433; Blant v. Societe Anonyme Du Filtre, 6 U. S. App. 335, 3 C. C. A. 455, 53 Fed. 98; Doolet v. Haden, 38 U. S. App. 651, 20 C. C. A. 494, 74 Fed. 429; Jenson v. Horton 29 U. S. App. 121, 12 C. C. A. 608, 64 Fed. 662." * * *

"In truth the purpose and effect of these injunctions were to restore and maintain the status which existed before the unconstitutional acts of the people and the officers of Oklahoma disturbed that status, and thereby to prevent the irreparable injury which the companies must otherwise have suffered during the pendency of these suits. **Plenary power is conferred, and the undoubted duty is imposed upon a court of equity to issue its injunction for such a purpose.** Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730, 741, 742, 19 L. R. A. 387; In re Lennon, 166 U. S. 548, 556, 17 Supt. Court, 658, 41 L. Ed. 1110; Buskirk v. King, 72 Fed. 22, 25, 18 C. C. A. 418; Pokegama S. P. Lumber Co. v. Klamath River & Imp. Co. (C. C.) 86 Fed. 528, 533, 535, 538; In re Arkansas Railroad Rates (C. C.) 163 Fed. 141, 143, 144."

Love v. Atchison T. & S. F. Ry. Co., 185 Fed. 321, pages 331. 332, 333.

DIVISION THREE.

(Assignments of Error, 1, 2, 4, 15.)

Brief of Argument.

Point One.

The Commission's order was predicated upon the premise that the rate established would yield a fair return upon the property of the appellant used and useful in manufacturing and distributing gas in Atlanta. The value of this property the Commission fixed at $5,250,000.

Point Two.

It is not to be disputed that the valuation thus fixed by the Commission does not represent the present value of the property acquired by appellant prior to the year 1914. Nor is it to be disputed that the Commission's finding as to working capital was utterly unjustifiable under the evidence.

Point Three.

The Commission, by its failure to consider appellant's property purchased prior to 1914, as hav-

ing increased in value denied to that property that element possessed by all other property, viz: the possibility of an increase in value. In other words, **it in effect held that property devoted to the public service** thereby becomes divested of the right to be thereafter measured in the medium of exchange existing as of the time of the fixing of its rates, **and must be considered as being worth no more than its cost, less such depreciation as it may have suffered.** This is contrary to all rulings of this court and contrary to the very opinions cited by the commission.

Galveston Co. v. City of Galveston, 42 Sup. Ct. Rep. 351.

Houston v. S. W. Bell Tel. Co. 42 Sup. Ct. Rep. 486.

Point Four.

By allowing for working capital in 1921 the same amount per customer that the company was required to use in 1914 the Commission erred. This is so palpably true as to require no discussion.

Point Five.

The case coming up on a constitutional question appellant was entitled to **the independent judgment** of the court upon the issues submitted. (While the trial court announces this rule nevertheless its opin-

ion takes on the nature of a review merely of the Commission's findings.)

Ohio Valley Co. vs. Ben Avon Borough. 253 U. S. 287.

Oklahoma Operating Co. vs. Love. 252 U. S. 331.

Point Six.

Judgments of courts must in all cases be based upon and find support in the pleadings filed and evidence adduced in court under the formalities of judicial procedure. The right one possesses to the independent judgment of a court is the right to have his cause adjudged in court upon evidence formally offered in support of issues properly tendered.

Point Seven.

Though the court was permitted the exercise of its discretion, in passing upon the question of the granting of the interlocutory injunction prayed for —the discretion was a judicial one and bound to be exercised within a correct application of legal and equitable principles to the facts as established by the evidence.

Point Eight.

While it is not required that the court consider itself concluded by the opinions of expert witnesses, neither is it permissible for it to wholly disregard the entire body of the evidence in a case where such evidence stands without dispute.

Point Nine.

Since the decision of this case this court has held in the Galveston case that the income tax chargeable to the corporation is a proper operating charge—but that the fact that taxes have been paid may be considered in fixing the just rate of return. The trial court's estimates should thus be revised to read as follows:

Estimated return for year $378,786. or
8% yield upon $4,734,820.
7% yield upon $5,411.220.
6% yield upon $6,313,100.

Point Ten.

In 1908 in a period of low interest rates and **before the adoption of the income tax amendment,** this court held that the Consolidated Gas Company was entitled to a return of 6% upon its investment (212 U. S. 19;50). Under the ruling in the Galveston case

the fact that the corporation's income tax has been paid may be considered in fixing the rate of return. Thus we may consider the two cases in parallel in so far as the income tax is concerned. If a company having no income tax to pay is entitled to six per cent it must follow that under exactly similar circumstances a company with its income taxes paid should be entitled to six per cent.

But the circumstances are not similar.

(a). The Consolidated Gas case was decided in 1908.

(b). The company was declared to be the most favorably situated Gas Company in America.

(c). It was located at the financial center of the United States.

(d). The Appellant Company is located in a city and state in which there is no local money for investment in utilities and all such moneys must come from outside. (Record 342 Commission's 48th Annual Report.)

(e). The Record is without dispute upon the proposition that 8% is the lowest rate of return demanded and ordinarily received by Companies conducting business of like responsibility and hazard in the state of Georgia.

(f). The record is also without dispute that money for the development of this utility cannot be secured upon the company's mortgage bonds at a lower rate than 8.3%. (See Interesting and Illuminating testimony of Mr. Atkinson, Chairman of the Board—Record 322, 323, 324, 325.)

(g). The measure of the return required by a utility to permit it to function is not the rate paid upon its mortgage secured Bonds. Bonds cannot be sold to the full value of the property more than houses or farms can be mortgaged to their full value. It is axiomatic that the return or hope of return to the unsecured investor must be higher than that to the secured investor. Therefore, it cannot be disputed that if a company is to live and permanently perform its public functions its earnings must be at a rate somewhat higher than the rate it pays upon its secured obligations.

(h). As long ago as 1911 Judge Sanborn of the Eighth Circuit in the Minnesota Rate Cases held that the constitutional guarantees required a return of at least 7% to Western railroads. In Alabama vs. Railroad Commission, 197 Fed. 954 at 959 (1912) Judge Jones declared 8% the lowest rate permissible to railroads in Alabama.

(i). Practically the universal finding the Public Service Commissions for the year 1921 (including the finding of appellee Commission in the case at bar) were that a fair return required annual earnings of at least 8%. (Record 89, fixing return at 8%; Record 342, stating return on **minimum** value had been held to figures only short of a denial of what is reasonable.)

(j). The Federal Transportation Act, in effect upon the date of the decision herein, the latest expression of Congress on the subject as related to carriers, required that rates be fixed to yield a return

in the aggregate in the territories covered thereby of 6% (5½+½) and granted to the railroads, which through more favorable locations or more efficient operation earned more than 6%, one-half of the excess. It is a matter of common knowledge that the great systems of transportation enjoy a much higher credit than do manufacturing companies such as appellant and that appellant's return must be substantially higher than that of the carriers to attract and interest capital.

ARGUMENT.

The Fifth Assignment of Error

An attentive consideration of this assignment of error leads inevitably to the question, "What constitutes just compensation for the use of property devoted to the public service?" Some notable discussions of this important matter are to be found in the opinions of this court. The most familiar of these is perhaps that appearing in the opinion in the Consolidated Gas Case (212 U. S. 19; 48). From it we quote:

> "There is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of

risk in the business is a most important factor, as well as the locality where the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments. One who invests his money in a business of a somewhat hazardous character is very properly held to have the right to a larger return without legislative interference, than can be obtained from an investment in Government bonds or other perfectly safe security."

In this case the court concluded that under the facts shown the company was entitled to 6% per annum.

In another notable decision a helpful application of the principles announced in the Consolidated Gas Case is to be found. This is the decision in Lincoln Gas Co. vs. Lincoln (250 U. S. 256). We quote as follows:

"We cannot approve the finding that no rate yielding as much as 6 per cent. upon the invested capital could be regarded as confiscatory,

in view of the undisputed evidence, accepted by the master, that 8 per cent. was the lowest rate sought and generally obtained as a return upon capital invested in banking, merchandising, and other business in the vicinity; 7 per cent. being the 'legal rate' of interest in Nebraska. Complainant had not such monopoly nor were its profits 'virtually guaranteed' in such a sense as to permit the public authorities to restrict it to a return of 6 per cent. upon its invested capital."

These two decisions may be said to fairly foreclose all discussion as to the propriety of considering the amount of risk in the business; the locality of the business and the rate expected and usually received there upon investments of a somewhat similar character as "most important factors." They also indicate in a comprehensive way something of the rates per cent per annum which may pass the constitutional test of just compensation.

Coming now directly to the case at bar, the facts of which may scarcely be said to be in dispute, we confront the following question:

May just compensation within the meaning of the constitution be said to have been accorded private property devoted to public use, where for a substantial period of time (in the instant case four years), the owner, **in the trial of insufficient rates prescribed by the state,** has been compelled to serve at an average return during the period of approximately 2% per annum; the record disclosing that no

past provision had been made for equalizing the return over such periods and the state announcing its intention to make no provision therefore in the future?

To this question the state answers in effect that while it is undeniably true that the rates were unconstitutionally low during this period and the use of appellant's property proportionally confiscated, nevertheless the confiscation is a past event, and the righting of the injustice, or in effect of restoring the confiscated property, is entirely outside of its power.

The soundness of this theory must be tested by an examination of the principle upon which the superstructure is erected. This principle finds expression in the language of the Commission as follows (Record 22):

> "We do not believe the Commission has the legal right in prescribing rates for the future to prescribe such as will also provide for the insufficiency of rates in the past—in substance to make them retroactive. * * * We understand it to be the duty of the Commission, as far as it can foresee to provide rates which will produce a reasonable return, **but we do not understand that it or its creator, the State, guarantees a reasonable return for every day and under all conditions.**"

An examination of the last suggestion at once discloses its inapplicability to the question under dis-

cussion. **It is undeniably true that neither the Commission; its creator, the State, nor the Federal Constitution guarantees the company a return.**

The guarantee under discussion is that guarantee of the Federal Constitution that neither the state nor its agency the Commission **shall deny to the company the available opportunity of earning a fair return.**

And the question under discussion is, "Is that guarantee satisfied by the policy toward this company already pursued and to be pursued by appellees?"

There is in this record no denial and no testimony to support a denial of the following assertions:

First—That despite the Federal guarantees a fair return **otherwise readily available** was denied to appellant by the state of Georgia during the four years 1917-1920 inclusive. That this reached a total of approximately one million dollars.

Second—That if appellee's theory of rate regulation be adopted by this court the confiscation of appellant's property over this period will become an accomplished fact despite the constitutional inhibitions.

The injustice involved in such a conclusion is not to be disputed. In the light of these reflections we may now approach the Commission's first suggestion in effect that it has no "legal right in prescribing rates for the future to prescribe such as will also provide for the insufficiency of rates in the past." With the **distant past** or with losses arising from economic

causes we are not concerned. **We are concerned with the facts of the case at bar.** Here the failure of earnings was solely the result of an admittedly mistaken policy of rate regulation over a limited number of years combined with a duty upon the part of the utility to fairly test the rates prescribed **as ordered by the Commission.**

What then are the legal rights of the Commission in rate making? From the statute of its creation we ascertain that its legal rights are defined as follows (Section 5: Act Extending Powers of Railroad Commission; approved Aug. 22, 1907):

"The power to determine **what are just and reasonable rates** and charges is vested exclusively in said Commission."

This power is supplemented by power of "general supervision of all * * * gas * * * companies within the state. * * * And while it may hear complaints, yet the Commission is authorized to perform the duties imposed upon it of its own initiative." It is given authority to "examine into the affairs of said companies and to keep informed as to their general condition * * * and the manner in which their lines are managed, conducted and operated." It has power "to prescribe and establish a uniform system of accounting" and "to examine all books, contracts, records and documents" of any such company.

From these statutory provisions it is clear:

First—That by the adoption of the act the state initiated a continuing policy of supervision and regulation of these public instrumentalities.

Second—That full power to determine what are **just and reasonable** rates is vested in the Commission. The state was clearly within the fair exercise of its police powers in delegating this broad power of regulation to the Commission.

We may, therefore, conclude that the Commission does have power to fix just and reasonable rates, and insofar as appellant's constitutional right to a fair return may be preserved **by the fixing of just and reasonable rates** this right should be respected by the Commission.

We now approach a question very largely economic in its phases. Is it unjust or unreasonable, as between a gas company and its consumers (for both must be considered) to treat such failures of earnings as accrue from misjudgments of rate making bodies, as a natural burden and incident to the business to be provided for either by the accrual of reserves therefore or by providing therefore after the happening of the event?

We may answer this question by the statement of an economic truth: viz., that the legitimate cost of any public service is the total of the legitimate operating costs (including depreciation), taxes and a fair return to the property. Legitimate operating costs include many items not susceptible of being charged to the hour, or even month, week or year of their actual occurrence. Accruals for these uncertain and contingent items must be made and whether made in advance or after the happening of the event, the im-

possibility of an exactly even distribution among consumers is the same.

So it must be with the earning of the return as against such inevitable contingencies as must naturally inhere in a policy of rate regulation adopted by the state. No consumer is endowed with the right to receive his gas **at the exact cost of the particular gas he consumes.** The suggestion is palpably absurd. Small items are averaged over the month's operation, larger items over the year's operations; and still larger items over a number of years' operations. The object of course is to insure a reasonable uniformity both of rate and return. The spreading of these items is a matter of sound business judgment and is as inevitable as the economic forces which make all future estimates and predictions uncertain.

When just principles of accounting are fairly applied and a fair charge based thereupon made for a service or commodity the limit of human ability is reached and the rights of the consumer fully protected.

In the case at bar the state itself assumed the exercise of its undoubted right to fix appellant's charges. This was in the year 1909 (see General Order 14; Record 343). From that date on appellant possessed no authority over its own rates of charge; over the return to be provided for therein; or over the distribution of that return as between its consumers. **If by reason of a policy of the state, mistaken though it may have been, a distribution of this return must be made over a longer period of time**

than normally required, may this be asserted by the state as a basis for denying appellant the fair return it has earned? We submit that the question, fairly considered, answers itself. But we further submit that it is a matter of common knowledge: that by far the larger number of appellant's consumers remain constant, and the theory of a shifting population bearing unjust burdens is imaginary and not real.

For the reasons pointed out we confidently suggest that the proposed policy of the Commission results in the confiscation of appellant's property and that the order complained of being based upon and a part of the carrying out of this policy is in contravention of the Federal Constitution and void.

II.

We desire to call your honors' further attention to another substantial weakness in appellee's position. If it be true, as suggested by the learned trial court, that the risk of earning less than a fair rate of return over more or less protracted periods, due to errors or unconstitutional orders of rate regulating bodies, is one natural to the business, it follows that such risk must be given substantial consideration in fixing the rate of return. The amount by which the rate must be increased to meet this risk will be governed, of course, by available knowledge of what losses may be expected to result therefrom. Inasmuch as no business can live (let alone receive a fair return) unless upon the whole, averaging good years

with bad, its return is comparable to returns received by capital in other enterprises, **it follows that just compensation would require as a minimum a yield of return sufficiently high so that on the whole, considering these natural risks, the business would be justly remunerative.**

Having determined that the four years of losses were natural incidents of the business, it became the plain duty of the trial court to give this risk important consideration and ascertain as nearly as possible the just return required under the constitutional guarantees considering this natural and as the record disclosed highly threatening risk of the business.

We, therefore, again submit that the trial court clearly erred in its conclusions of law and in its application of the law to the facts shown in the record.

III.

Judge Sanborn, in the case of Love vs. Atchison T. & S. F. Ry. Co., 185 Fed. 321, 331, 332, 333, said:

> "The controlling reason for the existence of the judicial power to issue a temporary injunction is that the court may thereby prevent such a change in the relations and conditions of persons and property, as may result in irremediable injury to some of the parties before their claims can be investigated and adjudicated. It is a familiar rule of equity jurisprudence that if the questions presented in a suit for an injunc-

tion are grave and difficult, and the injury to the moving party will be certain, great and irreparable if the motion for the interlocutory injunction is denied and the final decision is in his favor, while if the decision is otherwise, and the injunction is granted the inconvenience and loss to the opposing party will be inconsiderable or probably may be indemnified by a bond, the injunction usually should be granted. Allison v. Corson, 88 Fed. 581, 584, 32 C. C. A. 12; City of Newton v. Levis, 79 Fed. 715, 718, 25 C. C. A., 181, 163; Great Western Ry. Co. v. Birmingham & O. J. R. Co., 2 Phil. Ch. 597, 602; Glascott v. Lang, 3 Myline & C. 451, 455; Shrewsbury & C. R. v. Shrewsbury & B. R. Co., 1 Sim. (N. S.) 410, 426; State v. Brailsford, 2 Dall, 402, 1. I. Ed. 433; Blant v. Societe Anonyme Du Filtre, 6 U. S. App. 335, 3 C. C. A. 455, 53 Fed. 98; Doolet v. Haden, 38 U. S. App. 651, 20 C. C. A., 494, 74 Fed. 429; Jenson v. Horton 29 U. S. App. 121, 12 C. C. A. 608, 64 Fed. 662."

The practice of granting temporary injunctions to maintain the status, in so called rate cases is of long standing. Its propriety is universally recognized. Such an injunction against the enforcement of a rate making order is in effect a supersedeas pending an independent judicial determination of constitutional questions. Without it the independent investigation may be had—but in the meantime from month to month the very thing sought to be

prevented will be continuing—**without** possibility of redress even though complainant be victorious. As between individuals is it to be doubted that a temporary injunction would as a matter of course be granted under similar circumstances — **where at slight inconvenience to the one the possibility of irreparable injury to the other may be avoided?** Then why should not the same rule be applied where a municipality or instrumentality of the state is charged with the purpose and intent of taking another's property without due process of law or just compensation therefor? If due respect for the orders of a co-ordinate branch of the government requires that courts exercise great caution in entering judgments affecting their validity—it may also be said that due respect for the constitutional rights of the citizen requires from every instrumentality of government the same caution when error may result in the permanent and unconstitutional severance of property rights.

If courts of equity are to accord to acts of state regulatory bodies that high regard which manifests itself in the refusal to set such acts aside until actual trial demonstrates the fact of their illegality—then regulatory bodies should show an equally high regard for that just treatment which the constitution demands for the citizen. Such high regard is not manifested by a policy which throws the entire burden of rate making experiments upon the seller when both seller and purchaser may be fully and easily protected.

IV.

In Lincoln Gas Co. v. Lincoln, 250 U. S. 256, this court declined to approve a finding of the trial court **that no rate yielding as much as 6% upon the invested capital could be regarded as confiscatory,** in view of the undisputed evidence that 8% was the lowest rate sought and generally obtained as a return upon capital invested in banking, merchandising and other business in the vicinity. This rate of return was being tested as of the year **1915.** By its opinion filed upon the 2nd day of June, 1919, the court permitted the complainant to make another application for relief upon the ground that it was a matter of common knowledge "that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or the future."

The undisputed evidence in the case at bar as to the minimum return was the same as that in the Lincoln case. Moreover the Commission itself characterized a return of 8% as **"being only short of a denial of what is reasonable,"** and as **"the most meagre return which it believed could be sustained in the courts."** (Record 340, 339.) There was therefore to be found in the testimony before the court not a word to support a finding that a return of less than 8% was reasonable. The court's own independent estimate of earnings to be derived from the new rate was

$378,786, which is a yield of 8% upon but $4,734,820, which is $515,180 less than the Commission's own finding of value.

It is a yield of 7% upon $5,411,220, which is but $161,220 more than the Commission's valuation **which in its turn was $1,838,678 less than the lowest testimony as to the present value of the physical property, working capital and going value.** The composite of the lowest values which any witness in this action placed upon the actual physical property, and working capital of appellant plus 10% for going value as found by the Commission is $7,088,678 (see page 12).

The annual earnings available under the new rate according to the opinion of the trial court were $378,786.

The return to be anticipated therefore upon the lowest justifiable valuation under the evidence of these three elements was 5.3%. Due allowance was also claimed for several other substantial elements of value in appellant's property.

It thus seems clear that the court failed to accord to appellant that independent judgment **based upon the evidence offered** to which it was entitled; otherwise the injunction should have issued.

CONCLUSION.

The record in this case admits of no doubt that a serious injustice has been done. It admits of no doubt that gas rates unconstitutionally low have

been established and enforced by appellees. It is not disputed that appellant has not received just compensation for its service—and that by the same measure the gas consumers of Atlanta have, under force of law, received service at less than its just price.

It is now suggested by the state of Georgia that all this is a fact accomplished—that it may rightfully close the door upon this period of the company's activities and begin a new period with no reference whatever to the old.

If the constitutional requirements of just compensation to a continuing instrumentality of public service are satisfied by a policy of rate regulation which divides time into fixed periods and declines to recognize or give consideration to the results of one period in fixing rates for another **whether on the whole the compensation may be just or unjust,** there may be merit in the suggestion.

If, on the other hand, just compensation to a continuing instrumentality of public service means **just compensation to be justly accorded** as continuously as the service is demanded and received and with as near an approach to uniformity of distribution as between calendar periods, as may reasonably be provided, considering economic changes and economic crises, then the suggestion is devoid of merit. For, as we have pointed out, by the simple application of those broad rules of human conduct under which every permanently conducted business must operate just compensation can readily be accorded.

The intimation that there may be consumers now on appellant's lines who did not receive gas during the period of confiscatory rates and that to such, a rate giving consideration to past experiences would be unjust has also been shown to be without merit. It might well be answered that no system of regulation or taxation or government has yet been devised to do exact and abstract justice to every individual. But the answer may be placed fairly upon the premise that the fair cost of any service includes a fair return upon the Capital employed. That so far as possible within the limits of human frailities that element of the cost will be distributed, by the state, which has taken charge of the matter on behalf of its citizens evenly one year with another and one month with another; that where impossible from any cause (even though that cause be error of the regulating authorities) to allocate this element of cost to the years in absolute uniformity the state will distribute it as justly as it may. This always has been the rule and always must be the rule as to all other elements of costs, as clearly pointed out by this court in Kansas City So. Ry. Co. vs. U. S. 231 U. S. 423; 446.

We further submit in conclusion that had every rate from 1917 to 1920 been just and fair there could still be no legal justification for the refusal of the Commission to consider appellant's property at its present value in the fixing of the rate complained of. If states desire that property devoted to a public use shall be divested of the power of increasing in

value, either from special causes, or because of the declining value of the medium of exchange, statutes so providing should be enacted. **As to all future transactions such acts would doubtless be valid.** And if justly framed to prevent **either increase or decrease in such value** such acts might establish a wise public policy.

But though the present rule has been that followed by this court from the beginning (having been first established when **present costs were less than original costs.** See San Diego Land Co. vs. National City 74 Fed. 79; 174 U. S. 739; San Diego Co. vs. Jasper 189 U. S. 439), no state has as yet enacted such statutes. There has been however a marked disinclination to follow the rule, during this period when the tables as between investor and consumer are in a measure turned. Appellees, in answer, frankly admit that they did not follow the rule. Such being the case we submit that clear error appeared of such a nature that an interlocutory injunction should have issued properly safeguarded, to maintain the status until appellants' rights had been fully and finally determined.

Respectfully submitted,

WM. CHAMBERLAIN,

Amicus Curiae.

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Supreme Court of the United States

OCTOBER TERM, 1922

No. 298
(Old No. 801, October 1921)

GEORGIA RAILWAY & POWER COMPANY AND ATLANTA GAS LIGHT CO.
Appellants

vs.

RAILROAD COMMISSION OF GEORGIA Et al.
Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

REPLY BRIEF FOR PLAINTIFFS IN ERROR

L. Z. ROSSER,
JACK J. SPALDING,
WALTER T. COLQUITT,
ROBERT G. DODGE,
J. PRINCE WEBSTER,
LINTON C. HOPKINS,
Attorneys of Appellant.

Johnson-Dallis Company, Printers, Atlanta

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IN THE

Supreme Court of the United States

GEORGIA RAILWAY AND POWER COMPANY AND THE ATLANTA GAS LIGHT COMPANY,
Appellants,

vs.

RAILROAD COMMISSION OF GEORGIA, ET AL.,
Appellees.

No. 298.
October Term, 1922.

REPLY BRIEF FOR APPELLANTS.

Appellees' brief contains some very serious miscalculations and mistakes of fact.

"RATES NOT CONFISCATORY".

Under this heading, appellees' brief (p. 12) undertakes to demonstrate this statement in two ways:

First: By taking the test period used by the Commission in its opinion, July-November (R. pp. 20-21), which was at the rate of $1.65 per thousand and calculating the full year on the same basis; then undertaking to reduce this to a $1.55 per thousand base for the entire year (Brief p. 13).

Then it undertakes, on page 14 of the brief, to state the percentage of earnings this would yield on the four valuations shown.

Second: This brief then undertakes to demonstrate that the rates are not confiscatory by arriving at a year's net earnings, by using these five months, July-November, and by using the months of March, April, May and June, 1921, (which the brief claims were larger than the five months used by the Commission in its test) and thus constructs net earnings for nine months; then from this nine months' calculates a full year.

It then undertakes to reduce this yearly net income arrived at on the $1.90 basis to a $1.55 rate, and to show the percentages of earnings when applied to said four valuations. (Brief p. 14.)

FIRST.

Taking the $203,811.99 as the true net earnings for the five months, July-November, as claimed by the Commission on the $1.65 basis, the brief proceeds to state (pp. 13-14) that at the reduced rate of $1.55 ordered by the Commission "the net earnings for the year 1921 would be approximately $459,000.00."

In arriving at this figure, two grievous errors are committed. The correct calculation is by deducting ten cents per thousand for the amount of gas sold during these five months, 509,007,800 cu. ft. (Brief p. 13), which amounts to $50,900.78, and which makes a net earning of $152,911.21 for the five months, which results in a total net earning for the 12 months of $366,986.90, at the $1.55 rate instead of $459,000 as claimed, and making an overstatement in the brief of $92,013.10 for the year.

This error arose by the calculation in the brief taking the yearly earnings as claimed at the $1.65 rate, to-wit: $489,-144.40 and undertaking to reduce them to a $1.55 rate by the method of proportion, instead of simply deducting 10 cents per thousand cubic feet on the amount of gas sold during the year.

It is not a question in proportion, for the expense of producing the gas is not reduced at all and the reduction of 10 cents per thousand comes entirely out of net earnings.

When the brief undertakes to state the percentages of earnings that the net earnings as claimed would amount to on the four valuations stated, it does not allow any increased reduction for depreciation growing out of the physical properties increasing.

In the valuations $7,500,000, $8,500,000, and $9,500,000, the evidence shows that these physical properties are valued at $6,926,307, (R. p. 181) while on the valuation used by the Commission $5,250,000, these fixed properties are only valued at $4,984,536, (R. pp. 21-30) making a difference of $1,941,771.

Two (2%) per cent depreciation on this increased amount would take off yearly from earnings an additional $38,835.42 for depreciation, when appled to either valuation above $5,250,000.00; which is entirely ignored in the calculation of percentages, made in the brief.

The table therefore should be as follows:

Value	Appellee's Percentage Yield	Correct Percentage
$9,500,000.00	4.8	3.45
8,500,000.00	5.4	3.86
7,500,000.00	6.	4.37
5,250,000.00	8.7	6.99

These estimates do not include anything for claim of depreciation of 2½% instead of 2%, nor for including 10,000,000 cu. ft. gas in the estimate made by the Commission for 5 months (July-November) which was sold at higher rates.

SECOND.

When appellees' brief undertakes to determine the full year's net earning, by using the Commission's calculation for five (5) months (July-November), and adding thereto a calculation based on the four months, March, April, May and June, making nine months and calculating from this the full year, it falls into the following errors:

(a) In attempting to reduce the gas sold during the four months, March-June, from a $1.90 rate to a $1.55 rate, it underestimates the amount ---------- $103,510.17

This grows out of using the proportion of net earnings instead of the 35 cents a thousand reduction on the actual gas sold, 437,986,700 cu. ft. (R. p. 174.)

(b) It is based on reports made by the Company to the Commission, which deduct nothing

whatever for depreciation (R. pp. 376-378). The amount of depreciation applicable to these four months is ---------- 33,230.00
(R. p. 21.)

(c) The actual taxes as corrected by the Commission (R. p. 21) exceeded the estimated taxes contained in the reports for these four months (R. pp. 376-378) by---------- 14,000.00

Aggregating ----------$150,740.17

(d) Appellees' brief contains a further grievous error that renders the estimates under this second head obviously worthless in that it assumes that the month of June was reported to the Commission by the Company at $1.90 rate when it was reported only at a $1.65 rate.

The order of the Commission changing the rate from $1.90 to $1.65 was effective June 1st, 1921. This was a gross error against the contention being set up by appellees but serves to show the unreliabilty of the calculation and of the effort thereby to show that the rates were not confiscatory.

NO CONFLICT IN EVIDENCE AS TO VALUATION.

(A) Appellees' brief near the bottom of page 5 states:

> "There is a sharp conflict in the evidence even of experts as to the value of the property."

The record, (p.28) par. 13, of the sworn answer of defendant recites:

> "Defendants admit the fact that the evidence of the

engineering experts as to the value of the property was uncontradicted by any other evidence submitted at the October 31st hearing."

In an effort in the brief to show a conflct as to the engineering evidence on page 6, it is recited that,

"Dr. Riggs, an expert, employed by the Railroad Commission, estimated the value of the property at $5,299,435.00."

and refers to (R. pp. 242-243).

In (R. p. 243) in a note to this table 4, Dr. Riggs says:

"Note: This estimate is an attempt to express the writer's opinion as to the probable actual investment in each class of property."

Furthermore, this estimate is of date March 1st, 1921, and does not include $360,003.41 of additions made between that date and Dec. 31, 1921, the date of the ruling by the Commission (R. p. 165).

On (p. 244 of the Record) Dr. Riggs gives in Table V.:

"Valuation on price level as of January 1st, 1921" at $7,512,293.00.

CONCLUSION.

On page 23, appellees' brief, states:

"There is no sort of doubt but, that if the rates now prescribed should prove to be too low to allow the Company a fair return upon its property, after giving them a full and fair test, under actual operation for a reason-

able time, the Commission will revise the rate so as to insure it a fair return."

We respectfully submit that the experience as to losses shown in this case, for the years 1917, 1918, 1919 and 1920, are far from reassuring on this score.

If the "full and fair test" asked for, again shows a heavy loss, what relief has the Company?

Will not the Commission again use the same valuation of the Gas property applied in the instant case?

How is there ever to be any true test, however long it may be tried, until the right method of valuation for the property is determined?

Respectfully submitted,

L. Z. ROSSER,
Atlanta, Ga.

JACK J. SPALDING,
Atlanta, Ga.

WALTER T. COLQUITT,
Atlanta, Ga.

ROBERT G. DODGE,
Boston, Mass.,

J. PRINCE WEBSTER,
Atlanta, Ga.

LINTON C. HOPKINS,
Atlanta, Ga.

Attorneys for Appellants.

GEORGIA RAILWAY & POWER COMPANY ET AL. *v.* RAILROAD COMMISSION OF THE STATE OF GEORGIA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

No. 298. Argued November 29, 1922.—Decided June 11, 1923.

1. In valuing the physical properties of a public utility corporation as a basis for fixing rates, the present cost of reproduction, less depreciation, is an important element, but not the only element, to be considered. P. 629. *Southwestern Bell Telephone Co.* v. *Public Service Commission, ante,* 276, distinguished.
2. The value of a gas company's property for rate-making purposes, does not include the worth of its franchise to use the city streets, amounting to a perpetual permit but not to a monopoly. P. 632.
3. Nor may past losses, due to insufficiency of previous rates, be capitalized as part of the property on which the fair return is to be based. *Id.*
4. In such inquiries, the federal corporate income tax is to be treated as an operating charge, to be deducted in arriving at the probable net income. P. 633.
5. Taking into consideration the exemption of dividends from the normal federal income tax payable by stockholders, a rate fixed for a gas company which allows it a return of 7¼%, *held,* not confiscatory. *Id.*
6. A decree refusing an interlocutory injunction against enforcement of a rate challenged by a public utility corporation as confiscatory, should be affirmed in the absence of any error by the court below other than possible error in prophecy or of judgment in passing upon the evidence, and when the evidence does not compel a conviction that the rate will prove inadequate. P. 634.

278 Fed. 242, affirmed.

APPEAL from a decree of the District Court refusing an interlocutory injunction in a suit to enjoin enforcement of a gas rate fixed by the appellee Commission.

Mr. L. Z. Rosser and *Mr. Robert G. Dodge,* with whom *Mr. Jack J. Spalding, Mr. Walter T. Colquitt, Mr. J.*

Prince Webster and *Mr. Linton C. Hopkins* were on the briefs, for appellants.

In rate cases the value of the property is to be determined as of the time of the inquiry. *Houston* v. *Southwestern Bell Tel. Co.*, 259 U. S. 318; *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388; *Lincoln Gas Co.* v. *Lincoln*, 223 U. S. 349.

Cost is not the test. If the value of the property at the time of the inquiry is less than its cost, the Company cannot complain that the rate does not yield an adequate return upon the cost of the property. *San Diego Land Co.* v. *National City*, 174 U. S. 739; *San Diego Land Co.* v. *Jasper*, 189 U. S. 439; *Stanislaus County* v. *San Joaquin Co.*, 192 U. S. 201.

If, on the other hand, the value of the property has appreciated, a rate which yields a reasonable return on the cost is nevertheless confiscatory if it does not produce a fair return upon the present value. *San Diego Land Co.* v. *Jasper, supra; Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19; *Minnesota Rate Cases*, 230 U. S. 352; *Houston* v. *Southwestern Bell Tel. Co.*, 259 U. S. 318.

Reproduction cost, less depreciation, furnishes the approved measure of valuation. *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1; *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153; *Denver* v. *Denver Union Water Co.*, 246 U. S. 178; *Consolidated Gas Co.* v. *Newton*, 267 Fed. 231; 258 U. S. 165.

The method of taking pre-war costs, plus the cost of later additions, is improper. *St. Joseph Ry. Co.* v. *Public Service Comm.*, 268 Fed. 267; *Landon* v. *Court of Industrial Relations*, 269 Fed. 433; *Potomac Electric Power Co.* v. *Public Utilities Comm.*, 276 Fed. 327; *Public Service Ry. Co.* v. *Board of Public Utilities Commrs.*, 276 Fed. 979; *Petersburg Gas Co.* v. *Petersburg*, 132 Va. 82.

In the case at bar the Commission held, in effect, that increased reproduction cost due to conditions incident to

so abnormal an event as the World War is an exception to the general rule and cannot be taken into account. It is, of course, true that rates are established with some idea of permanency and that, if the value of the property at the moment a rate is established is inflated from some transitory cause, the rate is not necessarily confiscatory because it does not yield a full return on this inflated valuation. This Court cannot, however, fail to take notice of the fact that the price level of the latter part of 1921, considerably lower as it was than the prevailing level of the preceding two or three years, was vastly higher than any pre-war level and seems to have become stabilized to a very considerable degree since 1921. *Joplin Ry. Co.* v. *Public Service Comm.*; 267 Fed. 584; *Lincoln Gas Co.* v. *Lincoln*, 250 U. S. 256.

To value gas property in 1921 in the dollars of 1914 is palpably unjust and improper. *Elizabethtown Gas Co.* v. *Public Utility Commrs.*, 95 N. J. L. 18.

The mistake in valuing the physical property was reflected in the estimate of going concern value and the amount allowed for annual depreciation.

The allowance for working capital was figured on an improper basis and is wholly inadequate.

Without reference to further errors of the Commission the new rate is shown to be confiscatory.

The value of the franchise should have been included in the valuation. *Atlanta* v. *Gas Light Co.*, 71 Ga. 106; *West River Bridge Co.* v. *Dix*, 6 How. 507; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312; *Louisville* v. *Cumberland Tel. Co.*, 224 U. S. 661; *New York Electric Lines* v. *Empire City Subway*, 235 U. S. 179; *Owensboro* v. *Cumberland Tel. Co.*, 230 U. S. 58.

In the legislation of Georgia, franchises of this character are fully recognized as property.

There seems to be no logical reason why the value of franchises should not be included in a valuation for rate

purposes; and indeed it has been several times decided that they are properly to be included. *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19; *Spring Valley Waterworks Co.* v. *San Francisco*, 124 Fed. 574; *Joaquin & Kings River Co.* v. *Stanislaus County*, 191 Fed. 875; *Louisville & Nashville R. R. Co.* v. *Railroad Commission*, 196 Fed. 800. *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388, distinguished.

Past losses should have been taken into consideration.

The court below improperly disallowed the federal income tax as a deduction from gross income.

Upon the evidence the court should have issued the injunction prayed for notwithstanding that there had been no actual trial of the rate.

Mr. E. J. Reagan for appellees.

Mr. Wm. Chamberlain, by leave of court, filed a brief as *amicus curiæ*.

Mr. Justice Brandeis delivered the opinion of the Court.

The gas supply of Atlanta is furnished by the Georgia Railway & Power Company. Authority to fix public utility rates is vested by law in the Railroad Commission. On September 20, 1921, the Commission called upon the Georgia Company to show cause why the then maximum rate, $1.65 per 1000 cubic feet, should not be reduced; and hearings were duly had. The company insisted that under the proposed rate the net income would be less than 3 per cent. on what it claimed to be the fair value of the property. The Commission concluded that the net income under the proposed rate would be about 8 per cent. on the value found by it. This difference in their views as to the percentage of probable return arose mainly from their difference as to the value of the property. The

company claimed that it was at least $9,500,000. The Commission found that it was $5,250,000. On December 30, 1921, it ordered that the price of gas be reduced to $1.55.

The Georgia Company and the Atlanta Gas Light Company, its lessor, then brought, in the federal court for the Northern District of Georgia, this suit to enjoin enforcement of the order, claiming that the rate prescribed is confiscatory. The case was heard upon application for an interlocutory injunction by three judges under § 266 of the Judicial Code. The court did not approve in all respects the views expressed by the Commission; but it found that "even were there considerable error in fixing values by the Commission, the rate would not appear to be clearly confiscatory" and that enforcement of the order ought not be enjoined until the reduced rate had been tried. It, therefore, refused the interlocutory injunction; and the case is here on appeal under § 238 of the Judicial Code.

First. The objections mainly urged relate to the rate-base; and one of them is of fundamental importance. The companies assert that the rule to be applied in valuing the physical property of a utility is reproduction cost at the time of the enquiry less depreciation. The 1921 construction costs were about 70 per cent. higher than those of 1914, and earlier dates when most of the plant was installed. So much of it as was in existence January 1, 1914, was valued at an amount which was substantially its actual cost or its reproduction cost as of that date. The companies claim that it should have been valued at its replacement cost in November, 1921—the time of the rate enquiry; and that the great increase in construction costs was ignored in determining the rate base.

The case is unlike *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Service Commission, ante,* 276. Here the Commission gave careful considera-

tion to the cost of reproduction; but it refused to adopt reproduction cost as the measure of value. It declared that the exercise of a reasonable judgment as to the present "fair value" required some consideration of reproduction costs as well as of original costs, but that "present fair value" is not synonymous with "present replacement cost", particularly under abnormal conditions. That part of the rule which declares the utility entitled to the benefit of increases in the value of property was, however, specifically applied in the allowance of $125,000 made by the Commission to represent the appreciation in the value of the land owned. The lower court recognized that it must exercise an independent judgment in passing upon the evidence; and it gave careful consideration to replacement cost. But it likewise held that there was no rule which required that in valuing the physical property there must be "slavish adherence to cost of reproduction, less depreciation." It discussed the fact that since 1914 large sums had been expended annually on the plant; that part of this additional construction had been done at prices higher than those which prevailed at the time of the rate hearing; and it concluded that "averaging results, and remembering that values are . . . matters of opinion, . . . no constitutional wrong clearly appears."

The refusal of the Commission and of the lower court to hold that, for rate-making purposes, the physical properties of a utility must be valued at the replacement cost less depreciation was clearly correct. As was said in *Minnesota Rate Cases*, 230 U. S. 352, 434: "The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

What these relevant facts are had been stated in *Smyth* v. *Ames*, 169 U. S. 466, 546, 547:

" . . . the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

And in *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 52, it had been made clear " that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase."

The rule laid down in these cases was expressly recognized as controlling, both by the Commission and by the lower court. Evidence bearing on most of the facts there declared to be relevant facts was before them. The court states, and the record establishes, that the " opinion of the . . . Commission . . . evinces a full and conscientious consideration of the evidence." The opinion of the court shows that it also made careful examination of the evidence submitted and that it recognized the applicable rules of law. While it differed from the Commission in some matter of detail, it sustained the latter's finding that the value was $5,250,000. The question on which this Court divided in the *Southwestern Bell Telephone Case, supra,* is not involved here.

Second. Two objections to the valuation relate to the exclusion of items from the rate base, namely: the franchise to do business in Atlanta, said to be worth $1,000,000, and so-called losses from operations during recent years, alleged to aggregate $1,000,000. These items were properly excluded. The franchise in question is not a monopoly. It is merely a perpetual permit, granted by the legislature in 1856, to maintain gas mains in the streets, alleys, and public places of Atlanta without the necessity of securing the consent of the municipality. That such franchises are to be excluded in fixing the rate base was settled by *Cedar Rapids Gas Light Co.* v. *Cedar Rapids*, 223 U. S. 655, 669; *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153, 169, and *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388. The allowance for the franchise made in *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 43, 44, 48, was rested on special grounds which do not exist in this case. That past losses are not to be capitalized as property on which the fair return is based was held in *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 14; *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388. Here this conclusion seems even clearer than it was in those cases. The losses under consideration in the case at bar were obviously not a part of development cost. They were due to insufficiency of previous rates.

Third. Two further objections to the rate base relate to items of property included in it, which are alleged to have been undervalued. The companies contend that the working capital required was $420,000, whereas only $266,677 was allowed. They also contend that the "going concern" value is at least $750,000, whereas only $441,629 was allowed. These are findings of fact made by the Commission and approved by the lower court. We are not satisfied that either finding is erroneous.

Fourth. The companies contend that there was error, also, in estimating the amount of the probable net in-

come. One objection relates to the federal corporate income tax (10 per cent.) assumed to be $45,364. The Commission treated the tax as a proper operating charge. The court disallowed it; and thus increased its estimate of probable net income. In this the court erred. *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388. Its estimate of "$424,150 as the probable income per year under the new rate, with no allowance made for increased consumption or reduced cost of production that seem quite probable" should therefore be reduced to about $380,000. This is the amount indicated by the Commission's findings.

The other objections relate to the amount of the depreciation charge. The companies say the rate should be 2½ per cent. The Commission and the court allowed only 2 per cent. This question is one of fact, and we are not convinced that it was wrongly decided below. The amount of the depreciation charge is also objected to on the ground that the percentage should have been figured on a larger value. This objection depends upon the value to be placed upon the physical property which has already been discussed.

Fifth. The probable return based on the value and the probable income found by the Commission would be nearly 7¼ per cent. It must be borne in mind, as pointed out in *Galveston Electric Co.* v. *Galveston, supra*, that, since dividends from the corporation are not included in the income on which the normal federal tax is payable by stockholders, the tax exemption is, in effect, an additional return on the investment. A return of 7¼ per cent.—in addition to this tax exemption—can not be deemed confiscatory. The solicitude of the Commission to secure to the companies a fair return is shown by its treatment of them during the three years preceding the order here in question. Long prior to 1918, the gas rate had been fixed

by the utility at one dollar. Operating and construction costs having risen owing to the world war, the Commission raised the rate to $1.15 effective September 1, 1918; to $1.35 effective October 1, 1920; to $1.90 effective March 1, 1921. After costs had fallen materially, the rate was reduced to $1.65 June 1, 1921; and the order to reduce it to $1.55 was entered, effective January 1, 1922. In making each of these changes the Commission fixed a rate which it estimated would permit the company to earn a return of about 8 per cent. on the fair value of the property. Each change of rate was made upon careful consideration. If there was error, it was error in prophecy or error of judgment in passing upon the evidence. We cannot say that the evidence compelled a conviction that the rate would prove inadequate. Compare *San Diego Land & Town Co.* v. *National City*, 174 U. S. 739, 754; *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439; *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 17; *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388, 401, 402. Moreover, the decree is merely interlocutory.

Affirmed.

MR. JUSTICE McKENNA, dissenting.

I am constrained to dissent on the authority of *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Service Commission, ante*, 276; and *Bluefield Water Works & Improvement Co. v. Public Service Commission*, decided today, *post*, 679.

These two cases follow other cases which they cited, including that of *Smyth* v. *Ames*, decided a quarter of a century ago, declaring the rule of regulation to be, that in order to fix a rate for the use of property devoted to the public service, the property must be estimated "at the time it is being used for the public." And again, "that the value of the property is to be determined as of the time when the inquiry is made regarding rates."

The Commission in the present case conceded the rule, and violated it, and upon a unique justification. It said "The human race is only recovering from an experience the like of which the world never before endured—a world war—a world upheaval—an economic cataclysm. There are no stable measures of value today." Upon this the Commission departed from the values which then prevailed, and from those that the rule of law prescribed, that is, the values prevailing *at the time the property was being used for the public,* and reverted to the values which obtained January 1, 1914,—values that had not existed for over seven years, and no prophecy could say when, if ever, they would exist again.[1]

To separate the Company from the conditions which existed at the time of regulation was arbitrary and condemned the Company to accept an inadequate return upon the value of its property, not only for the then time, but for an indefinite future time. Similar action was condemned in the *Telephone Case*—no "economic cataclysm" repelling. Similar action was condemned in the *Bluefield Case*—no "economic cataclysm" repelling.[2] May I ask what had become of the "cataclysm"? Had it settled in Georgia in conscious indulgence to life and

[1] An expert witness of the Commission testified as follows: "I do not incline to the extreme high values of the war time period, but believe that when business does resume prices will again stabilize at figures considerably lower than the peak of 1920, but far above any pre-war level."

[2] The lower federal courts have not felt the bewildering effect—impotent effect I might say—that the Commission discovered in the post-war conditions. *St. Joseph Railway, etc., Co.* v. *Public Service Commission,* 268 Fed. 267; *Landon* v. *Court of Industrial Relations,* 269 Fed. 433, 444; *Potomac Electric Power Co.* v. *Public Utilities Commission,* 276 Fed. 327; *Public Service Ry. Co.* v. *Board of Public Utilities Commissioners,* 276 Fed. 979. And a state court has been equally free from confusion. *Petersburg Gas Co.* v. *Petersburg,* 132 Va. 82.

business in other parts of the country from its bewildering influence?

The contrariety of decision cannot be reconciled. To anticipate a possible criticism, however, I should say a distinction is attempted to be made between this case and the *Telephone Case,* a distinction, I think, not sustained by the record. It is said that the present case is unlike the *Telephone Case,* in that, "here the Commission gave careful consideration to the cost of reproduction; but it refused to adopt reproduction cost as the measure of value." The omission was the Commission's error—it was in disregard of the rule of the cases, disregard of the value of the utility at the time of its regulation—the time it was being used by the public. And such value was available. The problem was direct and simple—with no baffling element in it. It was only to find the reproduction cost of the utility, and this, necessarily, was constituted of the cost of its materials, and the cost of their fabrication, less an estimate of depreciation from the new. These costs and depreciations representing its value at the moment of time it was being regulated and being used by the public, such moment being the time prescribed by the law for the determination of its value—the determination of that upon which the rate for its use was to be based.

There was nothing obscure or puzzling about it. The cost of the materials and of their fabrication was as much a measure of the value of the utility when reproduced as the cost of materials and their fabrication were a measure of the value of the utility when it was produced—a measure of value of reproduction and production. A measure, it is true, of different degree which it was the duty of the Commission to regard, and because the Commission did not regard it, that is, because it did not consider the values at the time it was acting, its action was condemned. There are words in the

Telephone Case that are pertinent here. Here, as there, a Commission undertook to value the property of a utility without according any weight to the greatly enhanced costs of material, labor, supplies, etc., over those prevailing at a prior time. And it may be said here, as it was said there, "as a matter of common knowledge these increases were large."

The error in this case being of like kind to that which was committed by the Commission in that case, it should be visited by the same treatment, that is, a reversal of its action.

It is supposed that this case and the *Telephone Case* cannot coexist as declarations of law, without explanation. No attempt, however, is made to justify this case and the *Bluefield Case*. It seems to be taken for granted that they can coexist in the books in harmonious association. Can they?

For answer, it is worth one's while to inquire what the *Bluefield Case* decides. It is said in the opinion that "The record [in the case] clearly shows that the commission [whose action is reviewed] in arriving at its final figure did not accord proper, if any, weight to the greatly enhanced costs of construction in 1920 over those prevailing about 1915 and before the war, as established by uncontradicted evidence; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appears to have been wholly disregarded. This was erroneous." Citing the *Telephone Case* as well as other cases.

From this error all of the other errors in the case followed and it, and they, constituted the mistake of the Supreme Court of West Virginia in sustaining the action of the Commission, and the ground of reversal of the Supreme Court.

The cases, this and the *Bluefield Case*, are identical in errors. In this case the values that existed at the time

of regulation were wholly disregarded, and those of seven years before, those which existed in 1914, that is, before the war, were deliberately selected. This action was affirmed, as I have pointed out, by the District Court from whose decree this appeal was taken. The decree is affirmed, which is the affirmance of the action of the Commission.

In the *Bluefield Case* the value of the utility at the time of regulation "appears", according to the declaration of the Court, "to have been wholly disregarded".

The Supreme Court of West Virginia affirmed the action of the Commission. This Court in its opinion of today reverses that judgment, which is a reversal of the action of the Commission.

It will be observed the Commissions did exactly the same thing, and yet the action of one is affirmed, and the action of the other reversed. This contrariety of decision I cannot reconcile. There should be reversal of both or the affirmance of both if their identities are to be observed. I, therefore, must dissent from one or the other of the cases, and as the *Bluefield Case* has the support of the *Telephone Case*, I dissent from the present case, there being a majority against it, and those cases, besides, expressing my view of the law.

It may be said that if I get rid of the Commission's action, I must take account of the District Court's judgment of it upon an independent consideration of the record. I realize that the challenge has serious strength, but as the Court's opinion is very long, I can only meet the challenge by what I consider the error of the opinion. The Court disregarded, as the Commission did, the rule of law that the value of the Company's utility should be at the time it was being regulated, that is, at the time it was being used. The Court, however, did not entirely agree with the Commission. It said "in ascertaining the present value of physical properties, though correct

rules were announced by the Commission, we do not think they were exactly followed." And again, "The Commission did not allow the appreciation claimed on the investment since 1914, nor did it deduct from the investments of 1919 and 1920 and 1921, which were nearly a million dollars their admitted reproduction loss, but it did allow the appreciation in market price of real estate."

The last observation I do not pass upon as it has no consequential bearing on the question in the case. And I proceed to say that I have the impression that the Court's decision on the Commission's action was influenced by the Court's constitutional views. The Court said that "A rate established as reasonable, whether by the company or by the Commission is not guaranteed by the Commission or by the public. Whether it will actually yield more or less than a fair return during its continuance is a risk of the business" to which the company had devoted its property.

If this is an intimation that the Court was of the view that even if the action of the Commission resulted in a return to the utility of less than that which would be fair and reasonable it would not encounter the opposition of the Constitution, such view was error and, laboring under the error, I can understand that the Court was not anxiously concerned to investigate the grounds of the Commission's action—not concerned with the "risk of the business."

There are questions upon other elements of value upon which I do not consider it necessary to pass.

I think the order denying the preliminary injunction should be reversed.